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भारत का राजपत्र
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सं. 47] नई दिल्ली, शनिवार, नवम्बर 21, 1992/कार्तिक 30, 1914
No. 47] NEW DELHI, SATURDAY, NOVEMBER 21, 1992/KARTIKA 30, 1914

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किये गये सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than the Ministry of Defence)

विधि और न्याय मंत्रालय
(विधि कार्य विभाग)
(न्यायिक प्रभाग)
सूचना
नई दिल्ली, 5 अक्टूबर, 1992

का.आ. 2884—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री दर्शन सिंह, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे मुक्तसर, जिला फरीदकोट, पंजाब व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5(226)/92-न्यायिक]
पी.सी. कण्णन, सक्षम प्राधिकारी

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Department of Legal Affairs)
(Judicial Section)
NOTICE
New Delhi, the 5th October, 1992

S.O. 2884.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Darshan Singh, Advocate for appointment as a Notary to practise in Muktsar, Distt. Faridkot (Punjab).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(226)/92-Judl.]
P. C. KANAN, Competent Authority

सूचना
नई दिल्ली, 16 अक्तूबर, 1992

का.आ. 2885—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री एम.ए. सुकुमारन, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे शिनाय नगर (मद्रास) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5(229)/92-न्यायिक]
पी सी. कण्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 16th October, 1992

S.O. 2885.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri N. A. Sukumaran Advocate for apopintment as a Notary to practise in Shenoy Nagar (Madras).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(229)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 16 अक्तूबर, 1992

का.आ. 2886 —नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री सुनील पंडित, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे दिल्ली संघ क्षेत्र में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[संख्या 5(231)/92—न्यायिक]

पी.सी. कृष्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 16th October, 1992

S.O. 2886.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Sunil Pandit, Advocate for appointment as a Notary to practise in Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(231)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 16 अक्तूबर, 1992

का.आ. 2887 —नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री हरीश जनक राय नानावती, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे अहमदाबाद (गुजरात) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5(228)/92—न्यायिक]

पी.सी. कृष्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 16th October, 1992

S.O. 2887.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Harish Janakrai Nanavaty, Advocate for appointment as a Notary to practise in Ahmedabad (Gujarat).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(228)/92 Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 16 अक्तूबर, 1992

का.आ. 2888 —नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री बिरधी चन्द शर्मा, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे गंगापुर सिटी, (राजस्थान) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5(219)/92—न्यायिक]

पी.सी. कृष्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 16th October, 1992

S.O. 2888.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Birdhi Chand Sharma, Advocate for apopintment as a Notary to practise in Gangapur City (Rajasthan).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(219)/92-Judl.]

P. C. KANAN, Competent Authority

सूचना

नई दिल्ली, 19 अक्तूबर, 1992

का.आ. 2889—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री इन्द्रजीत गुलाटी एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे ईस्ट आफ कैलाश (दिल्ली) में व्यवसाय करन के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5(232)/92—न्यायिक]

पी.सी. कृष्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 19th October, 1992

S.O. 2889.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Inderjit Gulati, Advocate for appointment as a Notary to practise in East of Kailash i.e. U.T. of Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(232)/92-Judl.]

P C. KANAN, Competent Authority

सूचना

नई दिल्ली, 19 अक्तूबर, 1992

का.आ. 2890 —नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री जय नारायन शर्मा, एडवोकेट उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे टी.बी. हनुमानगढ़ सब डिविजन (राजस्थान) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए ।

[सं. 5(233)/92-न्यायिक]

पी.सी. कृष्णन, सक्षम प्राधिकारी

NOTICE

New Delhi, the 19th October, 1992

S.O. 2890.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Shri Jai Narayan Sharma, Advocate for apopintment as a Notary ot practise in T.B. Hanumangarh Sub Division (Rajasthan).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(233)/92-Judl.]

P. C. KANAN, Competent Authority

अन्तरिक्ष विभाग

नई दिल्ली, 23 अक्तूबर, 1992

का.आ. 2891 —राष्ट्रपति, संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अन्तरिक्ष विभाग कर्मचारी (वर्गीकरण, नियंत्रण और अपील) नियम, 1976 का और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं, अर्थात् :—

1. (1) इन नियमों का संक्षिप्त नाम अन्तरिक्ष विभाग कर्मचारी (वर्गीकरण, नियंत्रण और अपील) (संशोधन) नियम 1992 है ।

(2) ये राजपत्र के प्रकाशन की तारीख को प्रवृत्त होंगे ।

2. अन्तरिक्ष विभाग कर्मचारी (वर्गीकरण, नियंत्रण और अपील) नियम, 1976 (इसके आगे इसे उक्त नियम कहा जाएगा) में विद्यमान नियम 16 के स्थान पर निम्नलिखित को प्रतिस्थापित किया जाये, अर्थात्:—

16. कतिपय मामलों में विशेष प्रक्रिया :—नियम 11 से 15 में अन्तर्विष्ट किसी बात के होते हुए भी —

(i) जहां किसी कर्मचारी पर ऐसे आचरण के आधार पर जिसके कारण अपराधिक आरोप पर उसकी दोषसिद्धि हुई है, कोई शास्ति अधिरोपित की गई है, या

(ii) जहां अनुशासनिक प्रक्रिया का ऐसे कारणों के आधार पर जो लेखबद्ध किए जाएंगे यह समाधान हो गया हो कि इन नियमों में उपबंधित रीति से जांच करना युक्तियुक्त रूप से साध्य नहीं है; या

(iii) जहां राष्ट्रपति का यह समाधान हो गया है कि राज्य की सुरक्षा के हित में इन नियमों में उपबंधित रीति से जांच करना समीचीन नहीं है,

वहां अनुशासनिक प्राधिकारी, मामले की परिस्थितियों पर विचार कर सकेगा और जहां ठीक समझे, उस पर ऐसे आदेश कर सकेगा ।

"परन्तु किसी कर्मचारी को खण्ड (i) के अधीन किसी मामले में शास्ति अधिरोपित करने के लिए कोई आदेश दिए जाने के पूर्व अभ्यावेदन करने हेतु एक अवसर दिया जा सकेगा;

परन्तु इस नियम के अधीन किसी मामले में कोई आदेश करने से पूर्व जहां आयोग का परामर्श आवश्यक हो, वहां आयोग से परामर्श किया जाएगा" ।

3. उक्त नियम में "बड़ी शास्ति" उप-शीर्ष के अधीन खण्ड (v) को निम्नलिखित खण्ड द्वारा प्रतिस्थापित किया जाएगा अर्थात् :—

"(V) खंड (iii) (क) में यथा उपबंधित के सिवाए किसी विशेष/निर्धारित अवधि के लिए समय-वेतन को किसी निचले स्तर तक घटना और साथ ही ये दिशा निर्देश देना कि क्या कर्मचारी ऐसे वेतनमान में स्तरावनत किए जाने की अवधि के दौरान वेतनवृद्धि अर्जित करेगा अथवा नहीं और यह कि ऐसी अवधि के समाप्त हो जाने पर उनके वेतन की भावी वेतनवृद्धि के विलम्बन पर उक्त समय वेतनमान की स्तरावनति का कोई प्रभाव पड़ेगा या नहीं" ।

4. उक्त नियमों में नियम 8 में खण्ड (ix) के पश्चात् और स्पष्टीकरण के पूर्व निम्नलिखित परन्तुक अंत: स्थापित किये जाएंगे अर्थात्:—

"परन्तु प्रत्येक ऐसे मामले में जिसमें कोई पदीय कार्य करने या उससे प्रवरित रहने के लिए या इनाम के रूप में वैध पारिश्रमिक से भिन्न कोई परितोष किसी व्यक्ति से स्वीकार करने का आरोप सिद्ध हो जाता है खण्ड (ix) अथवा खण्ड (viii) में उल्लिखित शास्ति अधिरोपित की जाएगी :

परन्तु यह और कि किसी असाधारण मामले में और उसके लिए जो विशेष कारण हैं उन्हें लेखबद्ध करके कोई अन्य शास्ति अधिरोपित की जा सकेगी ।"

5. उक्त नियमों में नियम 11 के उपनियम (8) के खण्ड (क) के अधीन परन्तुक में "दो" शब्द के लिए "तीन" शब्द प्रतिस्थापित किया जाएगा ।

[फा. सं. 2/5/(1)/91-VI

श्रीमती उ. शंकर, उप सचिव

टिप्पण : दिनांक 1-4-1976 के भारत के राजपत्र (असाधारण) भाग-II, खंड 3, उप-खण्ड(ii) में अधिसूचना संख्या 2/9(12)/74-II(1) दिनांक 1-4-1976 द्वारा मूल नियम प्रकाशित किए गए तथा तत्पश्चात् निम्न द्वारा संशोधित किए गए :—

क्रम संख्या	अधिसूचना संख्या	तारीख
1.	2/10(32)/76-I	10-02-1977
2.	2/10(32)/76-I	16-05-1977
3.	2/10(27)/76-I	01-08-1977
4.	2/7(5)/77-I	15-02-1978
5.	2/7(5)-77-I	27-05-1978
6.	2/9(12)/74-III	16-03-1979
7.	9/4/(1)/80-III	26-05-1980
8.	9/4(1)/80-III	26-05-1980
9.	9/4/(1)/80-III	05-09-1980
10.	9/4(1)/80-III	13-10-1980
11.	9/4(1)/80-III	13-10-1980
12.	9/4(1)/80-III	20-12-1980

1	2	3
13.	9/4(1)/80-III	20-12-1980
14.	2/8(1)/81-I	28-08-1981
15.	2/8(1)/81-I	16-07-1982
16.	2/9(1)/83-I(V)	29-07-1985
17	2/5(1)/85—V	02-01-1986
18.	2/9(1)/83-I(V)	02-01-1986
19.	2/5(1)/86—V	17-03-1986
20.	2/5(2)/86—V	20-10-1986
21.	2/5(1)/90-VI	01-01-1991
22.	2/5(2)/86-V(VI) (vol. III)	15-11-1991

DEPARTMENT OF SPACE

New Delhi, the 23rd October, 1992

S.O. 2891.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Department of Space Employees' (Classification, Control and Appeal) Rules, 1976 namely :—

1. (1) Thesse rules may be called the Department of Space Employees' (Classification, Control and Appeal) (Amendment) Rules, 1992.

(2) They shall come into force on the date of their publication in the official Gazette.

2. In the Department of Space Employees' (Classification, Control and Appeal, Rules, 1976, (hereinafter referred to as the said rules), the following may be substituted in place of existing Rule 16 namely:—

16. Special procedure in certain cases.—Notwithstanding anything contained in rules 11 to 15—

(i) Where any penalty is imposed on an employee on the ground of conduct which has led to his conviction on the criminal charge; or

(ii) Where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) Where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,

the disciplinary authority may consider, the circumstances of the case and make such orders thereon as it deems fit :

Provided that the employee may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i);

Provided further that the Commission shall be consulted where such consultation is necessary before any orders are made in any case under this rule.

3. In the said rules, in rule 8, under sub-heading 'Major Penalties', for clause (v), the following clause shall be substituted, namely:—

"(v) Save as provided for in clause (iv)(a), reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay".

4. In the said rules, in rule 8, after clasue (ix), and before the Explanation, the following proviso shall be inserted, namely:—

"Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or for bearing to do any official act is established, the penalty mentioned in clause (viii) or clause (ix) shall be imposed :

Provided further that in any exceptional case and for special reasons recorded in writing any other penalty may be imposed".

5. In the said rules, in the Proviso under clause (a) of sub-rule (8) of dule 11 for the word "two" the word "three" shall be substituted.

[F. No. 2/5(1)/91-VI]

Smt. U. SANKAR, Dy. Secy.

Note:—Principle rules were published vide notification No. 2/9(12)/74-III(I) dated 1-4-1976 in the Gazette of India (Extra-ordinary), Part II Section-3, subsection (ii) dated 1-4-1976 and have been subsequently amended by:-

Sl. No.	Notification No.	Dated
1.	2/10(32)/76-I	10-02-1977
2.	2/10(32)/76-I	16-05-1977
3.	2/10(27)/76-I	01-07-1977
4.	2/7(5)/77-I	15-02-1978
5.	2/7(5)/77-I	27-05-1978
6.	2/9(12)/75-III	16-03-1979
7.	9/4(1)/80-III	26-05-1980
8.	9/4(1)/80-III	26-05-1980
9.	9/4(1)/80-III	05-09-1980
10.	0/4(1)/80-III	13-10-1980
11.	9/4(1)/80-III	13-10-1980
12.	9/4(1)/80-III	20-12-1980
13.	9/4(1)/80-III	20-12-1980
14.	2/8(1)/81-I	28-08-1981
15.	2/8(1)/81-I	16-07-1982
16.	2/9(1)/83-I(V)	29-07-1985
17.	2/5(1)/85-V	02-01-1985
18.	2/9(1)/83-I(	02-01-1986
19.	2/5(1)/86-V	17-03-1986
20.	2/5(2)/86-V	20-10-1986
21.	2/5(1)/90-VI	1-01-1991
22.	2/5(2)/86-V(VI)(Vol. III)	15-11-1991

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली 21 सितम्बर, 1992

आयकर

का.आ. 2892.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खण्ड (23—ग) के उपखंड (V) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा "गुरु गोबिन्द सिंह फाऊण्डेशन चण्डीगढ़" को कर-निर्धारण वर्ष 1988-89 से 1990—91 तक के लिए निम्नलिखित शर्तों के अध्यधीन रहते हुए उक्त उपखंड के प्रयोजनार्थ अधिसूचित करती है, अर्थात् :—

(1) कर-निर्धारिती इसकी आय का इस्तेमाल अथवा इसकी आय का इस्तेमाल करने के लिए इसका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है;

(2) कर-निर्धारिती ऊपर-उल्लिखित कर-निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से इसकी निधि (जेवर-जवाहिरात, फर्नीचर आदि के रूप में प्राप्त तथा रख-रखाव में स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा;

(3) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी जोकि कारोबार से प्राप्त लाभ तथा अभिलाभ के रूप में हो जब तक कि ऐसा कारोबार उक्त कर-निर्धारिती के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा पुस्तिकाएं नहीं रखी जाती हों।

[अधिसूचना संख्या 9095/फा.सं. 197/54/88—आयकर (नि.—I)]

भरत चन्द्र, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 21st September, 1992.

(INCOME-TAX)

S.O. 2892.—In exercise of the powers conferred by sub-clause (V) of clause (23-C) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies "Guru Gobind Singh Foundation, Chandigarh", for the purpose of the said sub-clause for the assessment years 1988-89 to 1990-91 subject to the following conditions, namely :—

(i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established ;

(ii) the assessee will not invest or deposit its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 ;

(iii) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business.

[Notification No. 9095/F. No. 197/54/88-ITA-I]

SHARAT CHANDRA, Under Secy.

नई दिल्ली 21 सितम्बर, 1992

आयकर

का.आ. 2893.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23—ग) के उपखंड (V) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा "श्रीमज्जगद्गुरु माधवाचार्य मूल महासंस्थान उत्तराधी मठ, धारवाड़ कर्नाटक" को कर-निर्धारण वर्ष 1990—91 से 1992—93 तक के लिए निम्नलिखित शर्तों के अध्यधीन रहते हुए उक्त उपखंड के प्रयोजनार्थ अधिसूचित करती है, अर्थात् :—

(i) कर-निर्धारिती इसकी आय का इस्तेमाल अथवा इसकी आय का इस्तेमाल करने के लिए इसका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है;

(ii) कर-निर्धारिती ऊपर उल्लिखित कर-निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से इसकी निधि (जेवर-जवाहिरात, फर्नीचर आदि के रूप में प्राप्त तथा रख-रखाव में स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा;

(iii) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी जो कि कारोबार से प्राप्त लाभ तथा अभिलाभ के रूप में हो जब तक कि ऐसा कारोबार उक्त कर-निर्धारिती के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा पुस्तिकाएं नहीं रखी जाती हों।

[अधिसूचना सं. 9094/फा.सं. 197/125/91—आयकर (नि.—1)]

शरत चन्द्र, अवर सचिव

New Delhi, the 21st September, 1992.

(INCOME-TAX)

S.O. 2893.—In exercise of the powers conferred by sub-clause (V) of clause (23-C) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies "Srimajjagadguru Madhawacharya Moola Mahasamsthana Uttaradhi Mutt, Dharwad, Karnataka" for the purpose of the said sub-clause for the assessment years 1990-91 to 1992-93 subject to the following conditions, namely :—

(i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established ;

(ii) the assessee will not invest or deposit its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 ;

(iii) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business.

[Notification No. 9094/F. No. 197/125/91-ITA-I]

SHARAT CHANDRA, Under Secy.

(आयकर आयुक्त, हरियाणा)

रोहतक, 4 सितम्बर, 1991

आयकर

का.आ. 2894.—आयकर आयुक्त, हरियाणा, आयकर अधिनियम, 1961 (1961 का 43) की धारा 2 के खण्ड 44 के अनुसरण में तथा दिनांक 27-6-1991 की अधिसूचना सं. 77 फा.सं. 7(153)/गो.शा./91-92 को संशोधन के साथ अधिक्रान्त करते हुए श्री बी.एस. चकाता, आयकर अधिकारी को दिनांक 19-4-90 के आदेश फा.सं. गो.शा./28(19)/89-90/15 में परिभाषित क्षेत्रों पर उपर्युक्त अधिनियम के अन्तर्गत कर वसूली अधिकारी, हिसार की शक्तियों का प्रयोग करने के लिए प्राधिकृत करते हैं।

2. यह अधिसूचना उपर्युक्त अधिकारी द्वारा कर वसूली अधिकारी का कार्यभार ग्रहण करने की तारीख से प्रवृत्त होगी।

[संख्या 377/फा.सं. 7(153)/गो.शा./92-93]

एस.के. गोयल, आयकर आयुक्त

COMMISSIONER OF INCOME TAX, HARYANA

Rohtak, the 4th September, 1992

INCOME-TAX

S.O. 2894.—In pursuance of clause (44) of section 2 of the Income-tax Act, 1961 (43 of 1961) and in partial modification and supersession of notification No. 77, F. No. 7(153)/CB/91-92, dated 27-6-1991, Commissioner of Income-tax, Haryana Rohtak hereby authorises Shri B. S. Chakatta, Income-tax, Officer to exercise the powers of the Tax Recovery Officer, Hissar under the said Act over the areas as defined vide order F. No. CB/28(19)/89-90/15, dated 19-4-1990.

2. This notification shall come into force with effect from the date the above mentioned officer takes over the charge of Tax Recovery Officer.

[No. 377/F. No. 7(153)/CB/92-93]

S. K. GOYAL, Commissioner of Income-tax.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 26 अक्तूबर, 1992

का.आ. 2895.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्द्वारा घोषणा करती है कि उक्त अधिनियम की धारा 31 के उपबंध प्रादेशिक ग्रामीण बैंक अधिनियम 1976 (1976 का 31) की धारा 3 की उपधारा (1) के के अन्तर्गत स्थापित किये गये क्षेत्रीय ग्रामीण बैंकों पर उस सीमा तक लागू नहीं होंगे जहां तक उनका सम्बन्ध 31 मार्च, 1992 तथा 31 मार्च, 1993 को समाप्त वर्षों के लिए उनके तुलन पत्रों और लाभ हानि विवरण तथा उन पर लेखा परीक्षकों की रिपोर्ट के प्रकाशन से है।

[सं. एफ. 8-6/87-आर.आर.बी.]

एम.एल. कुकरेजा, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 26th October, 1992

S.O. 2895.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendation of the Reserve Bank of India, hereby declare that the provisions of Section 31 of the said Act, shall not apply to the Regional Rural Banks established under sub-section (1) of Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976) in so far as the said Section requires the publication of their balance sheets and profit and loss accounts together with the Auditors' Reports thereon in respect of the years ending 31-3-1992 and 31-3-1993.

[No. F. 8(6)/87 RRB.]

M. L. KUKREJA, Under Secy.

नई दिल्ली, 31 अक्तूबर, 1992

का.आ. 2896.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970 के खण्ड 5 के उपखण्ड (1), खण्ड 7 और खण्ड 8 के उपखण्ड (1) के साथ पठित खण्ड 3 के उ खंड (क) के अनुसरण में, केन्द्रीय सरकार/डा० ए० सी० शाह को 1 नवम्बर, 1992 से प्रारम्भ होकर 31 दिसम्बर, 1992 को समाप्त होने वाली अवधि के लिए बैंक आफ बड़ौदा के अध्यक्ष एवं प्रबंध निदेशक के रूप में पुनः नियुक्त करती है।

[सं. एफ-20/2/90-बी.ओ.]

के.जी. गोयल, निदेशक

New Delhi, the 31st October, 1992.

S.O. 2896.—In pursuance of sub-clause (a) of clause 3 read with sub-clause (1) of clause 5, clause 7 and sub-cluse (1) of clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970 the Central Government hereby re-appoints Dr. A. C. Shah, as the Chairman and Managing Director of the Bank of Baroda for a period commencing on Ist November, 1992 and ending with 31st December, 1992.

[No. F. 20/2/90-B. O. I.]

K. G. GOEL, Director.

वाणिज्य मंत्रालय

(मुख्य नियंत्रक, आयात-निर्यात का कार्यालय)

आदेश

नई दिल्ली, 30 अक्तूबर, 1992

का.आ. 1897.—मैं. फ्लोरिण्ड शूज लि. 31 मैडोवस स्ट्रीट, मद्रास-600112 को ई पी सी जी स्कीम के अन्तर्गत संलग्न सूची के अनुसार पूंजीगत माल का आयात करने के लिए 2137236/-(इक्कीस लाख सैंतिस हजार दो सौ छत्तीस रुपये मात्र) का एक आयात लाइसेंस सं. पी/सी जी/2100334 दिनांक 24-7-92 मंजूर किया गया था।

फर्म ने उक्त लाइसेंस की सीमाशुल्क और मुद्रा नियंत्रण प्रयोजन प्रति की अनुलिपि प्रति इस आधार पर जारी करने के लिए आवेदन किया है कि लाइसेंस की मूल सीमाशुल्क प्रयोजन तथा मुद्रा नियंत्रण प्रति खो गई है या गुम हो गई है। यह भी बताया गया है कि लाइसेंस की सीमाशुल्क

प्रयोजन तथा मुद्रा नियंत्रण प्रति को किसी सीमाशुल्क प्राधिकारी से पंजीकृत नहीं कराया गया था और इस प्रकार सीमाशुल्क प्रयोजन प्रति के मूल्य का बिल्कुल भी इस्तेमाल नहीं किया गया है।

2. अपने तर्क के समर्थन में लाइसेंसधारी ने मोटरी पब्लिक, मद्रास के समक्ष विधिवत् शपथ लेकर स्टाम्प पेपर पर एक हलफनामा दाखिल किया है। तदनुसार मैं सन्तुष्ट हूं कि आयात लाइसेंस सं. पी/सी जी/2100334 दिनांक 24-7-92 की मूल सीमाशुल्क प्रयोजन तथा मुद्रा नियंत्रण प्रति फर्म से खो गई है या गुम हो गई है। अतः संशोधित आयात (नियंत्रण) आदेश, 1955 दिनांक 7-12-1955 के उपखण्ड 9 (ग ग) के अन्तर्गत प्रदत्त शक्तियों का प्रयोग करते हुए मैं, फ्लोरिण्ड शूज लि., 31, मैडोक्स स्ट्रीट, मद्रास-600112, को जारी की गई मूल सीमाशुल्क प्रयोजन तथा मुद्रा नियंत्रण प्रति सं. पी/सी जी/2100334 दिनांक 24-7-92 को एतद्द्वारा निरस्त किया जाता है।

3. उक्त लाइसेंस की एक दूसरी सीमाशुल्क प्रयोजन तथा मुद्रा नियंत्रण प्रति पार्टी को अलग से जारी की जा रही है।

[फा. सं. 18/406/ए एम 93/ई पी.सी.जी.-2/643]

श्रीमती माया डे. केम, उप मुख्य नियंत्रक, आयात-निर्यात

MINISTRY OF COMMERCE

(Office of the Chief Controller of Imports and Exports)

ORDER

New Delhi, the 30th October, 1992

S.O. 2897.—M/s. Florind Shoes Ltd., 31, Maddox Street, Madras-600112 were granted an import licence No. P/CG/2100334, dated 24-7-1992 for Rs. 21,37,236 (Rupees Twenty one lakhs thirty seven thousands two hundred and thirty six only) for import of C. G. as per list enclosed under EPCG Scheme.

The firm has applied for issue of Duplicate copy of Customs and Exchange Control purpose copy of the above mention licence on the ground that the original Customs purpose and Exchange control copy of the licence has been lost or misplaced. It has further been stated that the Customs purpose and Exchange Control copy of the licence was not registered with any Customs Authority and as such the value of Customs purpose copy has not been utilised at all.

2. In support of their contention, the licensee has filed an affidavit on stamped paper duly sworn in before a Notary Public, Madras. I am accordingly satisfied that the original Customs purpose and Exchange control copy of import licence No. P/CG/2100334, dated 24-7-1992 has been lost or misplaced by the firm in exercise of the powers conferred under sub-clause 9(cc) of the Import (Control) Order, 1955 dated 7-12-1955 as amended the said original Customs purpose and Exchange Control Copy No. P/CG/2100334, dated 24-7-1992 issued to M/s Florind Shoes Ltd., 31, Maddox Street, Madras-600 112 is hereby cancelled.

3. A duplicate Customs purpose and Exchange Control copy of the said licence is being issued to the party separately.

[F. No. 18/406/AM-93/EPCG-II/643]

MRS. MAYA D. KEM, Dy. Chief Controller of Imports and Exports.

नागरिक पूर्ति, उपभोक्ता मामले और

सार्वजनिक वितरण मंत्रालय

(भारतीय मानक ब्यूरो)

नई दिल्ली, 13 अक्तूबर, 1992

का.आ. 2898.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 9 के उपनियम (1) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए भारतीय मानकों संबंधी मानक मुहर के डिजाइन निर्धारित कर दिए गए हैं:

अनुसूची

क्र० सं०	मानक मुहर का डिजाइन	उत्पाद/उत्पाद की श्रेणी	भारतीय मानक की सं. और वर्ष	लागू होने की तिथि
1	2	3	4	5
1.		यांत्रिक झाग टाइप अग्निशामक यंत्र	आईएस : 10204-1982	1992-07-01
2.		संघनित रबड़ वाली नारियल जटा की बुशलिंग	आईएस : 11060-1984	1992-06-16
3.		स्टेनलैस इस्पात के कब्जे	आईएस : 12817-1989	1992-06-16

[संख्या केप्रिवि/13 : 9]

एम. श्रीनिवासन, अपर महानिदेशक

MINISTRY OF CIVIL SUPPLIES, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION

(Bureau of Indian Standards)

New Delhi, the 13th October, 1992

S.O. 2898:—In pursuance of Sub-rule (1) of rule 9 of the Bureau of the Indian Standards Rules, 1987 the Bureau of Indian Standards, hereby notifies the Standard Mark(s), for the Indian Standards given in the Schedule:

SCHEDULE

Sl. No.	Design of the Standard Mark	Product/Class of Product	No. and year of the Indian Standard	Date of Effect
(1)	(2)	(3)	(4)	(5)
1.		Portable fire extinguisher mechanical Foam type	IS : 10204-1982	1992-07-01
2.		Moulded Rubberised Coir Cushioning	IS : 11060-1984	1992-06-16
3.		Stainless Steel Butt Hinges	IS : 12817-1989	1992-05-16

[No. CMD/13:9]

N. SRINIVASAN, Addl. Director General

नई दिल्ली, 13 अक्तूबर, 1992

का.आ. 2899.—भारतीय मानक ब्यूरो (प्रमाणन) विनियमन, 1988 के विनियम 6 के उपविनियम (3) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा नीचे अनुसूची में दिए गए उत्पादों की मुहरांकन फीस अधिसूचित करता है ।

अनुसूची

क्र. सं.	उत्पाद/उत्पाद की श्रेणी	भारतीय मानक की संख्या और वर्ष	इकाई	प्रति इकाई मुहरांकन फीस	लागू होने की तिथि
(1)	(2)	(3)	(4)	(5)	(6)
1.	यांत्रिक झाग टाइप अग्निशामक यंत्र	आईएस : 10204-1982	एक अग्निशामक यंत्र	रु. 1.50	1992-07-01
2.	संपीडित रबड़ चढ़ी मारियल जटा की कुशनिंग	आईएस: 11060-1984	एक टन	(1) रु. 25.00 पहली 250 इकाइयों के लिए (2) रु. 15.00 शेष इकाईयों के लिए	1992-06-16
3.	स्टेनलैस इस्पात के कब्जे	आई एस : 12817-1989	100 नग	रु. 1.20	1992-05-16

[सं. के.प्रबि./13 : 10]

एन. श्रीनिवासन, अपर महानिदेशक

New Delhi, the 13th October, 1992

S.O.2890.—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standard, hereby, notifies the marking fee(s) for the products given in the schedule:

SCHEDULE

S. No.	Product/Class of Product	No. and Year of Indian Standard	Unit	Marking fee per unit	Date of effect
(1)	(2)	(3)	(4)	(5)	(6)
1.	Portable fire extinguisher mechanical Foam type	IS : 10204-1982	One fire Extinguisher	Rs. 1.50	1992-07-01
2.	Moulded Rubberized Coir Cushioning	IS : 11060–1984	One Tonne	(i) Rs. 25.00 First 250 units and (ii) Rs. 15.00 Remaining units.	1992-06-16
3.	Stainless Steel Butt Hinges	IS : 12817–1989	100 Pieces	Rs. 1.20	1992-05-16

[No. CMD/13 : 10]

N. SRINIVASAN, Addl. Director General

मानव संसाधन विकास मंत्रालय

(शिक्षा विभाग)

नई दिल्ली, 27 अक्तूबर, 1992

का.आ. 2900.—केन्द्रीय सरकार राजभाषा (संघ के सरकारी प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप-नियम (4) के अनुसरण में मानव संसाधन विकास मंत्रालय (शिक्षा विभाग) के निम्नलिखित स्वायत्त संगठन को जिसमें 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

भारतीय प्रौद्योगिक संस्थान,
पवई, बम्बई–400076

[सं. 11011/2/92-रा.भा.ए.]

रमेश कुमार आंगिरस निदेशक (राजभाषा)

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Education)

New Delhi, the 28th October, 1992.

S.O. 2900.—In pursuance of sub-rule (4) of rule 10 of the Official Languages (Use for official purposes of the Union) 1976, the Central Government hereby notifies the following autonomous organisation of the Ministry of Human Resource Development (Department of Education), more than 80% staff of which has acquired working knowledge of Hindi :—

Indian Institute of Technology, Powai, Bombay-400076.

[No. 11011/2/92-OLU]

R. K. ANGIRAS, Director (O.L.).

नई दिल्ली, 28 अक्तूबर, 1992

का.आ. 2901.—केन्द्रीय सरकार राजभाषा (संघ के सरकारी प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, मानव संसाधन विकास मंत्रालय (शिक्षा विभाग) के अन्तर्गत निम्नलिखित केन्द्रीय विद्यालयों को, जिनमें 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

1. केन्द्रीय विद्यालय, मल्लेश्वरम्, बंगलौर (कर्नाटक)
2. केन्द्रीय विद्यालय, एम.टी. लाईन्स, देहरादून।
3. केन्द्रीय विद्यालय, नं 3, कोलाबा, बम्बई।
4. केन्द्रीय विद्यालय, मलाजखण्ड, बालाघाट, (मध्य प्रदेश)
5. केन्द्रीय विद्यालय, बालको कोरबा, (मध्य प्रदेश)
6. केन्द्रीय विद्यालय, नं. 1, शक्ति नगर, ग्वालियर, (मध्य प्रदेश)
7. केन्द्रीय विद्यालय नं० 2, ए.एफ.एम. कलाईकुण्डा (पश्चिम बंगाल)
8. केन्द्रीय विद्यालय, मकरा, रांची (बिहार)
9. केन्द्रीय विद्यालय, नं. 2, जालन्धर छावनी, (पंजाब)।
10. केन्द्रीय विद्यालय, सिग्नल लाइब्स, मेरठ छावनी, मेरठ (उत्तर प्रदेश)

11. केन्द्रीय विद्यालय, नं. 1, ईटानगर, (अरुणाचल प्रदेश)।

12. केन्द्रीय विद्यालय, आई.डी.पी.एल., वीरभद्र, ऋषिकेश (उत्तर प्रदेश)

13. केन्द्रीय विद्यालय, नं. 2, ए.एस.सी. सेन्टर, गया (बिहार)

14. केन्द्रीय विद्यालय, वायु सेना स्टेशन, सरसावा, सहारनपुर (उत्तर प्रदेश)

5. केन्द्रीय विद्यालय, श्रीगंगानगर (राजस्थान)

16. केन्द्रीय विद्यालय, नं. 1, के.रि. पुलिस अजमेर (राजस्थान)

17. केन्द्रीय विद्यालय नं. 1, अखनूर (जम्मू-कश्मीर)

18. केन्द्रीय विद्यालय, वेरकपुर (वायुसेना) (पश्चिम बंगाल)

19. केन्द्रीय विद्यालय, बी.ई.एम.एल. नगर, कोलार (कर्नाटक)

20 केन्द्रीय विद्यालय, ए.एफ.एस. बीदर (कर्नाटक)

21. केन्द्रीय विद्यालय, ए.एस.सी. (साउथ) विक्टोरिया रोड, बंगलौर (कर्नाटक)

[(सं. 11011/2/92-रा.भा.ए.)]

रमेश कुमार आंगिरस, निदेशक (रा.भा.)

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Deptt, of Education)

New Delhi, the 28th Oct., 1992

S.O. 2941 .—In pursuance of sub-rule (4) of Rule 10 of the Official Language (use for official purposes of the Union) Rules, 1976, the Central Govt. hereby notifies the following Kendriya Vidyalayas under the Ministry of Human Resource Development (Deptt. of Education), more than 80% staff of which has working knowlege of Hindi:—

1. Kendriya Vidyalaya, Malleshwaram, Bangalore (Karnataka)
2. Kendriya Vidyalaya, M.T. Lines, Dehradun.
3. Kendriya Vidyala, No. 3, Colaba, Bombay.
4. Kendriya Vidyalaya, Malaj Khand, Balaghat (M.P.)
5. Kendriya Vidyalaya, Balco, Korba (M.P.)
6. Kendriya Vidyalaya. No. 1, Shakti Nagar, Gwalior (M.P.)
7. Kendriya Vidyalaya, No. 2, A.F.S. Kalaikunda (W.B.)
8. Kendirya Vidyalaya, Dakra, Ranchi (Bihar).
9. Kendirya Vidyalaya, No. 2, Jallundhar Cantt. (Punjab)
10. Kendriya Vidyalaya, Sikh Lines, Meerut Cantt., Meerut (U.P.).
11. Kendriya Vidyalaya, No. 1 Itanagar (Arunachal Pradesh).
12. Kendriya Vidyalaya, I.D.P.L., Veerbhadra, Rishikesh (U.P.).
13. Kendriya Vidyalaya, No. 2, A.S.C. Centre, Gaya (Bihar).
14. Kendriya Vidyalaya, Air Force Station, Sarsawa, Saharanpur (U.P.).
15. Kendriya Vidyalaya, Sri Ganganagar (Rajasthan).
16. Kendriya Vidyalaya, No. 1, G.R.P.F., Ajmer (Rajasthan).
17. Kendriya Vidyalaya, No. 1, Akhnoor (J&K).
18. Kendriya Vidyalaya, Barrackpur (Air Force), (W.B.)
19. Kendriya Vidyalaya. V.E.M.L. Nagar, Kolar (Karnataka)
20. Kendriya Vidyalaya, A.F.S. Bidar, (Karnataka)
21. Kendriya Vidyalaya, A.S.C. (South) Victoriya Road, Bangalore (Karnataka).

[No. 11011/2/92-OLU]

R.K. ANGIRAS, Director (O.L.)

स्वास्थ्य और परिवार कल्याण मंत्रालय

नई दिल्ली, 9 अक्तूबर, 1992

का.आ. 2902.—अखिल भारतीय आयुर्विज्ञान संस्थान अधिनियम 1956 (1956 का 25) की धारा-4 के खंड(घ) के अनुसरण में केन्द्रीय सरकार एतद्द्वारा श्री अनिल बोर्दिया के स्थान पर श्री एस. वी. गिरी, सचिव, शिक्षा विभाग, मानव संसाधन विकास मंत्रालय को अखिल भारतीय आयुर्विज्ञान संस्थान, नई दिल्ली का सदस्य नामजद करती है तथा भारत सरकार, स्वास्थ्य और परिवार कल्याण मंत्रालय की दिनांक 29 अक्तूबर, 1988 के का.आ. सं. 3195 की अधिसूचना में निम्नलिखित संशोधन करती है, अर्थात् —

"उक्त अधिसूचना में क्रम संख्या-1 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्या और प्रविष्टियां प्रस्थापित की जाएंगी, अर्थात् :—

"श्री एस. वी. गिरी,	शिक्षा विभाग,
सचिव,	मानव संसाधन विकास
शिक्षा विभाग,	मंत्रालय के प्रतिनिधि"
मानव संसाधन विकास मंत्रालय	

[संख्या सं-16011/2/92-एम. ई. (पी जी)]

शैलजा चन्द्रा, संयुक्त सचिव

MINISTRY OF HEALTH & FAMILY WELFARE

New Delhi, the 9th October, 1992

S.O. 2902.—In pursuance of clause (d) of section 4 of the All India Institute of Medical Science Act, 1956 (25 of 1956) the Central Government hereby nominates Shri S. V. Giri, Secretary, Department of Education, Ministry of Human Resource Development to be a member of the All India Institute of Medcial Sciences, New Delhi vice Shri Anil Bordia, and makes the following amendments in the notification of the Government of India in the Ministry of Health and Family Welfare S. O. No. 3195, dated the 29th October, 1988, namely :—

In the said notification, for serial number 1 and the entries relating thereto, the following Serial number and entries shall be substituted, namely :—

1. Shri S. V. Giri,
Secretary,
Department of Education,
Ministry of Human
Resource Development.

Representative of the
Department of Education,
Ministry of Human.
Resource Development."

[No. V. 16011/2/92-ME (PG)]

SHAILAJA CHANDRA, Jt. Secy

नई दिल्ली, 26 अक्तूबर, 1992

का.आ. 2903.—केन्द्रीय सरकार, होमियोपैथी केन्द्रीय परिषद् अधिनियम, 1973 (1973 का 59) के खंड 3 के उपखंड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के तत्कालीन स्वास्थ्य और परिवार नियोजन मंत्रालय (स्वास्थ्य विभाग) की अधिसूचना सं. का. आ. 482(अ) तारीख 6 अगस्त, 1974 में निम्नलिखित संशोधन करती है, अर्थात् :—

उक्त अधिसूचना की सारणी में "धारा 3 की उपधारा (1) के खंड (ख) के अधीन निर्वाचित" शीर्षक के अंतर्गत क्रम संख्या 20 के पश्चात् निम्नलिखित क्रम संख्या और प्रविष्टियां अंत:स्थापित की जाएंगी, अर्थात् :—

(1)	(2)
"21. डा. ए. डी. कोठे स्थानापन्न प्रधानाचार्य नागपुर होमियोपैथी बायोकेमिस्ट्री कालेज एवं अस्पताल, 543-अज़म शाह ले आउट नागपुर।	नागपुर विश्वविद्यालय"

टिप्पण : डा. ए. डी. कोठे, इससे पूर्व एक वर्ष की अवधि के लिए नागपुर विश्वविद्यालय से निर्वाचित हुए थे और केन्द्रीय होमियोपैथी परिषद् से उनकी सदस्यता तारीख 23-10-91 को समाप्त हो गई थी। वे नवनिर्वाचनों में पुन: निर्वाचित हुए हैं और उनका वर्तमान कार्यकाल 31 अगस्त, 1994 तक है।

[संख्या सं. 26018/15/87-होमियो (सी सी एच)]

आर. के. मुखी, निदेशक (भा.चि.प.)

New Delhi, 26th October, 1992

In exercise of the powers conferred by sub-section (1) of section 3 of the Homoeopathy Central Council Act, 1973 (59 of 1973), the Central Government hereby makes the following amendments in the notification of the Government of India in the erstwhile Ministry of Health and Family Planning (Department of Health) S.O. 482 (E), dated the 6th August, 1974, namely:-

In the Table to the said notification, under the heading "Elected under clause (b) of sub-section (1) of section 3", after serial number 20 and the entries relating thereto, the following serial number and entries shall be inserted, namely:—

(1)	(2)
" 21. Dr. A.D. Kothe, Officiating Principal Nagpur College of Homoeopathy, and Biochemistry and Hospital 543, Azamshah Layout, Great Nag Road, Nagpur.	Nagpur University"

Note Dr. A.D. Kothe was earlier elected from Nagpur University for a period of one year and his membership to the Central Council of Homeopathy experid on 23-10-91. He has again been elected in the fresh elections and his present tenure is upto 31st August, 1994.

[No. V. 26018/15/87-Homoeo (CCH)]

R. K. MUKHI, Director (ISM)

(स्वास्थ्य विभाग)

नई दिल्ली, 24 सितम्बर 1992

का.आ. 2904.—केन्द्रीय सरकार, भारतीय आयुर्विज्ञान परिषद् अधिनियम 1956 (1956 का 102) की धारा 11 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय आयुर्विज्ञान परिषद् से परामर्श करने के पश्चात्, उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अनुसूची में,—

(1) गोवा विश्वविद्यालय" शीर्षक के नीचे की प्रविष्टियों के पश्चात् निम्नलिखित प्रविष्टियां अंत:स्थापित की जाएंगी, अर्थात् :—

मास्टर आफ सर्जरी (सामान्य शल्य विज्ञान)	एम. एस. (सा.श.वि.) (1 अगस्त, 1989 को या इसके पश्चात् प्रदान की गई)
डाक्टर आफ मेडिसिन (एनेस्थिसियोलॉजी)	एम. डी. (एनेस्थि) (1 फरवरी, 1990 को या इसके पश्चात् प्रदान की गई)
डाक्टर आफ मेडिसिन (विकृति विज्ञान)	एम. डी. (वि.वि.) (1 फरवरी, 1990 को या इसके पश्चात् प्रदान की गई)
मास्टर आफ सर्जरी (आर्थोपेडिक्स)	एम. एस. (आर्थो) (1 अगस्त, 1989 को या इसके पश्चात् प्रदान की गई)
डाक्टर आफ मेडिसिन (सामान्य आयुर्विज्ञान)	एम डी. (सा.आ.) (1 अगस्त, 1989 को या इसके पश्चात् प्रदान की गई)
डाक्टर आफ मेडिसिन (बालचिकित्सा विज्ञान)	एम. डी. (बा.चि.वि.) (1 फरवरी, 1990 को या इसके पश्चात् प्रदान की गई)

(2) "रवि शंकर विश्वविद्यालय" शीर्षक के नीचे की प्रविष्टियों के पश्चात् निम्नलिखित प्रविष्टियां अंत:स्थापित की जाएंगी,

डिप्लोमा इन आर्थोपेडिक्स	डी. आर्थो (1 जुलाई, 1980 को या इसके पश्चात् प्रदान की गई)
मास्टर ऑफ सर्जरी (आर्थोपेडिक्स)	एम. एस. (आर्थो) (1 जुलाई, 1982 को या इसके पश्चात् प्रदान की गई)

(3) दक्षिण गुजरात विश्वविद्यालय" शीर्षक के नीचे की प्रविष्टियों के पश्चात् निम्नलिखित प्रविष्टियां अंत:स्थापित की जाएंगी, अर्थात् :—

मास्टर ऑफ सर्जरी (नेत्र विज्ञान)	एम. एस. (ने. वि.) (1 मार्च, 1986 को या इसके पश्चात् प्रदान की गई)
डिप्लोमा इन आफथैल्मोलाजी	1 दिसंबर, 1984 को या इसके पश्चात् प्रदान की गई)

इस अधिसूचना में उल्लिखित विश्वविद्यालय द्वारा दी गई चिकित्सा अर्हताएं तब मान्यता प्राप्त चिकित्सा अर्हताएं होंगी जब वे प्रत्येक के सामने उल्लिखित तारीख को या इसके पश्चात् प्रदान की जाती है।

[सं. वी-11015/31/92-एम.ई. (यू. जी.)]

आर. विजयकुमारी, डेस्क अधिकारी

(Department of Health)

New Delhi, 24th September, 1992

S.O. 2904.—In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956) the Central Government after consulting the Medical Council of India hereby makes the following further amendment in he First Schedule to the said Act, namely:—

In the said Schedule (1) under the heading "Goa University" after the entries, the following entries shall be inserted, namely:—

"Master of Surgery (General Surgey)	....M.S. (Gen. Surg) (Granted on or after 1st August, 1989)
Doctor of Medicine (Anaesthesiology)	..M.D. (Anaes.) (Granted on or after 1st February, 1990)
Doctor of Medicine (Pathology)	..M.D. (Pathology) (Granted on or after 1st February, 1990)
Master of Surgery (Orthopaedics)	..M.S. (Ortho.) (Granted on or after 1st August, 1989)
Doctor of Medicine (General Medicine	..M.D. (Gen. Med.) (Granted on or after 1st August, 1989)
Doctor of Medicine (Paediatrics)	..M.D. (Paed.) (Granted on or after 1st February, 1990)"

(2) Under the heading "Ravishankar University", after the entries, the following entries shall be inserted namely:—

"Diploma in Orthopaedics	.. D. Ortho. (Granted on or after 1st July, 1980)
Master of Surgery (Orthopaedics)	...M.S. (Orho.) (Granted on or after 1st July, 1982)"

(3) Under the heading "South Gujarat University", after the entries, the following entries shall be inserted namely:—

"Master of Surgery (Opthalmology)	...M.S. (Optho.) (Granted on or after 1st March, 1986)
Diploma in Opthalmology	..D.O. (Granted on or after 1st December, 1984)"

The medical qualifications issued by the Universities mentioned in this notification shall be recognised medical qualifications when granted on or after the date mentioned against each.

[No. V. 11015/31/92-ME(UG),

[R. VIJAYAKUMARI, DESK OFFICER

श्रम मंत्रालय

नई दिल्ली, 23 अक्तूबर, 1992

का.आ. 2905.—केन्द्रीय सरकार संतुष्ट है कि लोकहित में यह अपेक्षित है कि बैंक नोट प्रेस, देवास (मध्य प्रदेश) में सेवा, जो औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची में प्रविष्टि 22 द्वारा सम्मिलित है, उक्त अधिनियम के प्रयोजनों के लिए लोक उपयोगी सेवा घोषित की जानी चाहिए।

अतः अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (न) के उपखंड (vi) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए तत्काल प्रभाव से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[संख्या एस-11017/14/85-डी-1(ए)]

एस. एस. प्रशार, अवर सचिव

MINISTRY OF LABOUR

New Delhi, the 23rd October, 1992

S.O. 2905.—Whereas the Central Government is satisfied that the Public interest requires that the service in the Bank Note Press, Dewas (MP) which is covered by entry 22 in the First Scheduled to the Industrial Disputes Act, 1947 (14 of 1947), should be declared to be a public utility service for the purpose of the said Act ;

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares with immediate effect the said industry to be a public utility service for the purposes of the said Act for a period of six months.

[No. S-11017/14/85-D. I(A)]

S. S. PRASHER, Under Secy.

नई दिल्ली, 23 अक्तूबर, 1992

का.आ. 2906.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इन्टीग्रेटिड फिशरीस प्रोजेक्ट, कोचीन के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार लेबर कोर्ट एरनाकुलम के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-92 को प्राप्त हुआ था।

[सं. एल-42011/9/91-आई.आर (डी.यू.) (पी०टी०)]

के. वी. बी. उण्णी, डैस्क अधिकारी

New Delhi, the 23rd October, 1992

S.O. 2906.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Integrated Fisheries Project, Cochin and their workmen, which was received by the Central Government on 22-10-1992.

[No. I 42011/9/91-IR(DU)(P0)]

K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT, ERNAKULAM

(Labour Court, Ernakulam)

(Wednesday, the 14th day of October, 1992)

Present :

Shri M. V. Viswanathan, B.Sc., LL.B.,

Presiding Officer

Industrial Dispute No. 13|91 (Central)

BETWEEN

The Director, Integrated Fisheries Project, Ernakulam Cochin-682016.

AND

The workmen of the above concern represented by the General Secretary, Indo-Norweign Project Employees Association, Ernakulam, Cochin-16 (2) The General Secretary, Integrated Fisheries Project Employees Congress, I.R.P. Fireshore Road, Ernakulam, Cochin-16 (3) The Branch Secretary, The Central Government Fishing Seamen's Association, Integrated Fisheries Project Unit, Ernakulam, Cochin-682016 (4) The General Secretary, All India Central Government Canteen Employees Association, Integrated Fisheries Project Unit, Ernakulam, Cochin-682 016.

Representations :

Sri V. V. Sidharthan, Addl. Central Govt. Standing Counsel. D. H. Road, Cochin-16. ... For Management.

Sri P. Sivan Pillai, Advocate, Karakamuri, Cochin-682011. ... For Union Nos. 1 to 3.

AWARD

This Industrial Dispute was referred to this court by the Central Govt. The dispue is between the management of Integrated Fisheries Project, Cochin and the workmen of the above concern represented by the General Secretary, Indo-Norweign Project Employees Association, Ernakulam. The General Secretary, Integrated Fisheries Project Employees Congress, Ernakulam. The Branch Secretary, The Central Government Fishing Seamen's Association, Integrated Fisheries Project Unit, Ernakulam, The General Secretary, All India Central Government Canteen Employees Association, Integrated Fisheries Project Unit, Ernakulam. The issue referred for consideration is "Whether the action of the management of Integrated Fisheries Project, Ernakulam, Cochin in transferring the posts of Mechanic and Processing Technologist of Ernakulam, Cochin Unit alongwith the incumbents to their newly created unit at Vishakapatnam is justified? If not, to what relief the workmen are entitled to?".

2. Notices were issued from this court to the management and the Unions 1 to 4. The management and the unions 1 to 3 entered appearance. Notices was served on the 4th union, but they did not turn up. So the 4th union was declared ex-parte. The unions 1 to 3 have not filed any claim statement. Sufficient time was given to the unions for filing claim statement. On 5-8-1992 there was no representation for the unions 1 to3 The case was again adjourned in 7-10-1992. But on that day also there was no representation for the union. There was also no representation for the management. So both, management and the unions were declared ex-parte. This circumstance would give an inference that the parties to this dispute are not interested in proceeding with the dispute. This would in turn give an indication that at present there is no subsisting industrial dispute between the management and the unions.

3. In the result, an award is passed holding that here is no subsisting industrial dispute between the management and the unions or the concerned workmen.

Ernakulam,,
14-10-1992.

M V. VISWANATHAN, Presiding Officer.

नई दिल्ली, 29 अक्तूबर, 1992

का.आ. 2907.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर सुपरिन्टेंडेन्ट ऑफ पोस्ट ऑफिस, अहमदाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण अहमदाबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-10-92 को प्राप्त हुआ था।

[सं. एल-40012/63/91-डी 2(बी)(पी०टी०)]

के० वी० बी० उण्णी, डैस्क अधिकारी

New Delhi, the 29th October, 1992

S.O. 2907.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sr. Supdt. of Post Office, Ahmedabad and their workmen which was received by the Central Government on 29-10-92.

[No. L-40012/63/91-D II(B)(Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI H. R. KAMODIA, PRESIDING OFFICER INDUSTRIAL TRIBUNAL, AHMEDABAD

Reference (ITC) No. 71 of 1991

ADJUDICATION

BETWEEN

Sr. Superintendent of Post Office,
A.M. Division,
Ahmedabad.

.....First party

And

Anil Khemchandbhai Rathod,
C/o. R.C. Pathak,
Allap Flats, Opp. Anjali Theatre,
Vasna Road, Ahmedabad.

.....Second party.

In the matter whether the action of the management of P & T through the SSPO, Ahmedabad in terminating the services of Shri A. K. Rathod w.e.f. February, 1988 is justified If not, what relief the concerned workman is entiled to ?

APPEARANCES:

Shri Bhargav M. Joshi, Advocate—for the first party.
Shri R. C. Pathak, Advocate—for the second party.

AWARD

An industrial dispute between the above named parties has been referred for adjudication u/s. 10(1)(d) of the Industrial Disputes Act, 1947, to this Tribunal by the Central Government, Labour Department, New Delhi under its order No. L-40012/63/91-D-2(B) dated 19-11-91.

2. The dispute relates to the question whether the action of the mangement of P & T through the SSPO. Ahmedabad in terminating the services of Shri A. K. Rathod w.e.f. February, 1988 is justified? If not, what relief the concerned workman is entitled to ?

3. The second party has, in its statement of claim at Ex. 6, contended that the concerned workman was working as a Postman under the department of the first party at Behrampura Post Office and he was appointed on a clear vacant post of Postman w.e.f. 7-5-85. He worked as such continuously till February, 1988. His services were orally terminated without assigning any reason. This was in violation of provisions contained in Sections 25F, 25G and 25H of the I.D. Act, 1947. His juniors were retained in services. At the same time, fresh recruitment was made after his termination from service. Therefore, it has prayed to direct the first party to reinstate the concerned workman on his original post with full back wages and continuity of service besides, special compensatory cost.

4. The first party has resisted the statement of claim of the second party and filed its written statement ot Ex. 8 wherein it has inter alia, denied that the cocerned workman was appointed as Postman in Behrampura Post Office. His engagement was as an outsider and he was engaged as a stop gap arrangement. No appointment order was issued in his favour. There is no cadre of casual labourers and so there does not arise any questions of illegal retrenchment of casual labourers. There are separate recruitment rules for the cadre of Postman and it is not possible to reinstate the concerned workman as Postman in view of those recruitment rules. As the concerned workman was not appointed as rgular Postman there did not arise any question of termination of services without observing the procedure prescribed for the same. No seniority list of outsider engaged purely in stop gap arrangement is maintained. Therefore on these grounds, it has prayed to dismiss the reference with costs.

5. The deposition of the concerned workman is at Ex. 13. The first party has examined Shri Rajnikant Nagardas Parekh at Ex. 16. This is the only oral evidence of the parties on the record. The parties have not produced any documentary evidence on the record. This Tribunal is, therefore, required to decide the industrial dispute on the basis of the oral version of these two witnesses, besides some admitted facts.

6. It is an admitted fact that the concerned workman was engaged by the first party. It has contended that he was engaged as outsider Postman purely as stop gap arrangement. For the present, we are not concerned with the fact whether he was engaged purely as stop gap arrangement because the fact remains that he was engaged as a Postman. What is contended in the written statement will go to show that he was engaged purely on a temporary basis. The second party has contended in the statement of claim at Ex. 6 that the concerned workman was engaged for the first time from 7-5-85 and he worked as such continuously till February, 1988 The first party has not come out with any specific denial on this contention and so far the present it is resumed that the first party admits that the concerned workman had worked as outsider Postman as stop gap arrangement from 7-5-85 till February, 1988. When a person is appointed as outsider Postman as stop gap arrangement, it would amount to his temporary appointment. It is an admitted fact that no appointment order was given to the concerned workman. However, that does not go against the concerned wodkman because the first party has admitted that without giving any appointment order the concerned workman was engaged as outsider Postman. Thus, he had actually worked as such with the first party He was attached to Behrampura Post Office. There is no dispute regarding this fact. He has said that he had started working as a Postman from 7-5-85 till February, 1988 when his services were orally terminated. There is no cross examination on this fact and so his version to have worked as Postman during this entire period can be said to have been remained uncontroverted. At the same time, Shri Rajnikant Nagardas Parekh by Ex. 16 has also not said in his deposition that this workman had not worked continuously during

this entire period. Thus, it is in this way that this fact must be held to have been proved from the oral evidence on the record. Now, the concerned workman has said that his signatures were taken on vouchers as and when wages were paid to him. The first party must have maintained muster roll because for the purpose of preparing pay bill of the concerned workman, it is required to calculate the number of days for which he worked in a particular month. So, the first party is in possession of muster roll, vouchers, etc. They are the best documents to prove the actual period for which the concerned workman had worked from 7-5-85 till February, 1988. These documents would certainly throw light whether he had continuously worked during this period. They will also assist this Tribunal in calculating the number of days for which he had worked or more particularly whether he had worked 240 days in a year preceding the date of his termination from services These best documentary evidence are with the first party. For the reasons best known to it, it has suppressed these documents and thus, it has failed to assist the Tribunal to come into a legal conclusion by not producing those documents. At this stage, a reference may be made to the case of Gopal Krishnoji v. Mohd. Haji Latif, AIR 1968, 1413 wherein it was held that when a party is in possession of best evidence which would throw light on the issue in controversy withhold it. Court ought to draw an adverse inference against him notwithstanding that onus of proof does not lie in him. It has further held that the party cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce the documents. Therefore, in the instant case this Tribunal will have to draw adverse inference to the effect that if the important documents as discussed above, which are in possession of the first party, were produced, they would have gone against the first party and would have borne out or substantiated case put forward by the first party on behalf of the concerned workman.

7. Shri Rajnikant Nagardas Parikh, Ex. 16, is the Sr. Superintendent of Post Office. He is working as such since last one year. He has admitted in so many words that he has no personal knowledge about the facts of the case and therefore, his evidence is totally worthless. He has added that he has gone through the record and on that basis he was giving his deposition Thus, this is nothing but an admission. There does exist some record pertaining to the concerned workman which was pursued by this witness before coming for deposition and that record is deliberately suppressed and not produced in this case for the purpose of assisting it to come to a proper adjudication. Thus, his entire version is based on derived knowledges. So, his oral version in respect of the facts contained in the record will have no importance because the facts on record can be proved by producing record itself and not by examining the person who admittedly has no personal knowledge about the facts contained therein. Therefore if the deposition of this witness is excluded from consideration, there refering the oral version of the concerned workman. Therefore, it may be said that his version has remained intact though, of course, he has been cross examined by the first party. Nothing substantial was taken out during the course of his cross examination except one fact. He appears to have inadvertently said that he used to complete the work of distribution of post within one or two hours. His this version cannot read in isolation it has got to read alongwith his other version. Prior to that he had already said that he used to discharge his duty as Postman for 8 hours. It is pertinent to note that Rajni Kant Nagardas Parekh, Ex. 16 has admitted during the course of his cross examination that the workman had discharged his duties for 8 hours every day. Thus, when witness of the first party admits this fact it becomes an undisputed fact or rather it becomes an admitted fact between the parties that the concerned workman till he was discharged from service had worked for 8 hours every day

8. The concerned workman has said in his deposition that S/Shri D. S. Dodiya & P. R. Makwana are juniors to him and still, however, they were retained in service at the time when he was discharged from service. He has also said that after his discharge from service, Shri Parmar was inducted in service. In short, it was tried to be suggested that the provisions contained in Section 25H are contravened Normally, the last person who had joined the service should be the first person to be discharged and not his senior. Thus, the first party has committed breach of this rule. There is no cross examination, so far as these facts are concerned, and at the same time, Shri Parekh Ex. 16 has not said a word as to the same in his entire deposition and so in this way these facts have remained uncontroverted. The concerned workman has said that he has continuously worked during the entire period. He has denied during the course of the cross examination that he had never worked for 240 days in a year. In order to prove this denial the first party ought to have produced muster roll, vouchers, etc. There are, therefore, reasons to believe that these documents go to substantiate or corroborate this oral version of the concerned workman and that is why the first party has deliberately kept back these documents from this Tribunal.

9. The learned advocate for the first party drawn my attention to the case reported in 1987, I L.L.J., page 370, wherein the question for consideration was for regularisation of casual labour. This is not the industrial dispute referred for adjudication to this Tribunal and so this decision is not at all applicable to the facts of the present case Then he drew my attention to the case reported in 1961, II LLJ, page 110, wherein a workman was retrenched from service and subsequent thereto the company had employed three new hands. This took place prior to the introduction of Chapter V-A in the I.D. Act. Therefore, the facts of this case are not applicable to the facts of the instant case Then, he drew my attention to case reported in 1986, II LLJ, page 268 In that case, the termination order was served. It was alleged as a termination simpliciter. Therefore, it was observed that it is incumbent on the Court to lift the veil and to see the real circumstances leading to the termination of the service. This case is also not applicable to the facts of the present case because it is nobody's case that the first party had served a termination order in writing upon the concerned workman. It is also not the case of the first party that his services were terminated on the ground of some misconduct, etc. Then, my attention was drawn to the case reported in 1987(1), GLR, at page No. 387, wherein it was held that Section 25-H is very clear to the effect that the workmen who are retrenched should be given an opportunity as prescribed by the rules before the management recruits fresh hands for the same post. In that case, it was held that this section became applicable even though no pleading to that effect was made in the statement of claim. The workman was a temporary workman who was discharged. Thereafter fresh appointment was also made and at that time preference was not given to him. The Labour Court came to the conclusion that he must be reinstated in service with continuity of service. This decision of the Labour Court was upheld by the High Court. The facts of this case more particularly the principles enunciated therein are applicable to the facts of the present case for coming to a proper adjudication. Thereafter, my attention was drawn to case reported in 1981, SC C(L&S) at page 478, wherein the services of a temporary workman were terminated. His case was not falling within the excepted or excluded categories mentioned in Section 2(oo) of the I.D. Act. In the instant case also, the services of the concerned workman were orally terminated and his case is not falling within the excepted or excluded categories mentioned in this provision. Therefore, as held by Their Lordships of the Supreme Court, the oral termination of service of the concerned workman would amount to retrenchment and the fact remains that the first party had not followed the mandatory procedure prescribed for bringing about a legal retrenchment as contained in Section 25F of the I.D. Act. Therefore, as held in this case, the oral termination of the service will have to be declared void ab initio and the concerned workman would be entitled to a declaration for continuation in service with full back wages. Therefore, in the instant case it will have to be held that the oral termination of the services of the concerned workman amounts to retrenchment and that this retrenchment was void ab initio in view of the fact that the first party had not followed the procedure prescribed u/s. 25 of the I.D. Act. Consequently, he would be entitled to a declaration to the effect that he continues in service w.e.f. the date of termination order of service and that he is entitled to full back wages from that date.

10. In view of what has been discussed in the above paragraphs of this judgement, I pass the following order:

ORDER

The present reference is allowed and so it is declared that the oral termination of the service of the concerned workman, Shri A. K. Rathod w.e.f. February, 1988 amounts to retrenchment without following the procedure prescribed for the same in Section 25F of the I.D. Act. It is, therefore, declared that he has continued in service from the said date of oral termination from the service with full back wages. The first party is directed to pay Rs. 150 by way of costs to the second party and bear its own.

SECRETARY

Ahmedabad, 23rd September, 1992.

H. R. KAMODIA, Presiding Officer

नई दिल्ली, 29 अक्तूबर, 1992

का.आ.2908.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. पी. डब्ल्यू. डी. अहमदाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-10-92 को प्राप्त हुआ था।

[सं एल-42012/49/91-आई आर (डी. यू) (पार्ट)]

के. वी. बी. उण्णी, डैस्क अधिकारी

New Delhi, the 29th October, 1992

S.O. 2908.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of C.P.W.D. Ahmedabad and their workmen, which was received by the Central Government on 26-10-92.

[No. L-42012/49/91-IR(DU)(Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI H. R. KAMODIA, INDUSTRIAL TRIBUNAL, AHMEDABAD

Ref. (ITC) No. 67 of 1991.

ADJUDICATION

BETWEEN

Executive Engineer,

Kendriya Nirman Vibhag,

Ahmedabad. -First party.

V|s.

Ramtusinh Lal Singh Thakore,

All India CPWD Employees'

Union, Ahmedabad. -Second padty.

In the matter of reinstatement of Ramtusinh Lalsingh Thakore with all back wages.

APPEARANCES :

Shri B. M. Joshi, Advocate -- for the first party.

Shri G. K. Rathod, Advocate—for the second party.

AWARD

An industrial dispute between the above-named parties has been refedred for adjudication to this Tribunal under section 10(1) of the I D Act, 1947 under Order No. L-42012/49/91 dt. 30-10-91 issued by the Labour Department of the Central Government.

2 The industrial dispute relates to the question whether the action of the Ex. Engineer (Civil) CPWD, Ahmedabad Division, Ahmedabad in treating the workman Shri Ramtusinh, L. Thakore as a contractor and terminating his services w.e.f. 30-6-90 is legal and justified and if not what relief he is entitled to.

3. The second party has in its statement of claim Ex. 3 contended that the first party is a department of the Central Government. It is governed by the provisions contained in the I.D. Act, 1947. Shri Ramtusinh L. Thakore was engaged in sedvice by it from 26-5-87 as a mason. He had worked as such till 31-6-90. His employment was orally terminated on 1-7-90 without assigning any reason. He was not given any opportunity to make any represetation. No. written order of termination was served upon him. The act of the first party in terminating his services is illegal and against the provisions of the I.D. Act, 1947 and so such act is required to be quashed. His presence used to be marked in the muster roll by the first party. He was paid at the rate of Rs. 22.65 per day. He was not allowed to avail off public holidays. He was paid at the end of the month of 26 days only. Still, however, the first party used to treat him as a person engaged on contract basis. He was never a contractor. He was an employeye. Thus the act of the first party in terminating his employment was illegal retrenchment in as much as the first party had not complied with the mandatody proivsions contained in Section 25F of the I.D. Act, 1947. So the second party has prayed to declare that the termination of employment of the concerned workman w e.f. 1-7-90 is against the provisions contained in section 25F and against the principles of natural justice and for directing his reinstatement in service with full back wages. It has further prayed to direct the first party to pay to him the stated amount as arrears of wages together with interest thereof.

4. The first party has resisted the statement of claim of the second party by filing its written statement Ex. 11, wherein it has inter alia contended that the concerned workman was never employed by the department on daily wages. He was enaged for work of attending complaints of repairs pertaining to masons working in various clonies and office under the maintenance of the department. He was given paid contract on daily wages. The payments were made by cheque. The work order was given to him. It was renewed at the interval of every 2 to 3 months. It was entitled to discontinue this arrangement and accordingly the arrangement was discontinued. There did not arise any question of termination of his employment and consequently there does not arise any question of breach of mandatory provisions of law. He was engaged on rates per day for attending complaints as agreed by him Therefore on these grounds it has prayed to dismiss the reference with cost.

5. The concerned workman is examined at Ex. 24. The first party has not adduced any oral evidence. The second party has produced some documents. They are at Exs. 14 to 23. The first party has not produced any documentary evidence. I have heard the learned advocates of the parties and I have gone through the entire record of the case. It is an admitted fact that the first party had taken the services of the concerned workman. According to the second party the concerned workman was employed whereas it is contended by the first party that the work was given to the concerned workman and so he was never employed, so the question for consideration is regarding the nature of relationship between the parties. According to the second party the relationship of employer employee existed between the first party and the concerned workman, whereas the first party has contended that the concerned workman was given a contract under a work order. So there was never any existence of employer-employee relationship between the parties. This is therefore the vexed question to be decided in this case. The .....which a particular documents is couched will have to be taken into consideration in order to decide the real nature of the transaction or the relationship between the parties. The label or description given to a document will not matter much. A gift deed may be des-

cribed as a sale deed. In that case it is the duty of the Court to consider the recital contained in the document for the purpose of deciding whether or not it is a gift deed or a sale deed. Such exercise will have to be done in the instant case. The description of some document as work order will not them much. No importance can be given to that description. We have to take into consideration the recitals conained in the alleged work orders for the purpose of coming to an appropriate conclusion. So the label given to a document may be regarded as a mask. That mask is required to be torn for the purpose of seeing the real face of the transaction between the parties. I think I have to undertake this exercise in this case for the purpose of deciding the above vexed question.

6. Ramtusinh Ex. 24 has stated that he was working as a mason. He had started doing this work from 26-5-87. He did this work till 30-6-90. Thus he had done this work for nearly about 3 yrs. He has admitted that work was taken from him by giving work order to him. Some work orders are produced in this case. I will refer to the same at a later stage for deciding the real nature of relationship between the parties. He has further said that the daily wages were paid to him and that he has continuously worked during the above entire period. Thus he had worked for more than 240 days in all the previous years immediately proceeding the date of his oral termination of employment. This aspect is not dispute because the first party has not adduced any evidence controverting his this version. The first party has not produced any muster roll. It was submitted that the concerned workman was not in the employment, at his presence was not required to be marked in the muster roll and that is why there is no muster roll pertaining to this concerned workman. In order to appreciate this submission the first party ought to have produced muster rolls for the period from 26-5-87 to 30-6-90 in order to show that the name of the concerned workman is missing in the muster rolls kept during this entire period. This would have been the best documentary evidence. However, for reasons best known to the first party the muster rolls are not produced and so it is legitimate to draw an adverse inference to the effect that if the first party had produced muster rolls of the above period they would have gone against it because they would have shown the positive inclusion of the name of the concerned workman in those muster rolls. The concerned workman was paid the amounts at intervals. His stamped receipts must have been taken. The vouchers must have been with the first party for the payments made to the concerned workman from time to time. The relevant account books kept by the first party will be there. All these documents could have been produced for the purpose of showing the actual number of days for which the concerned workman had worked under the alleged work orders. These documentary evidence are with the first party. They cannot be with the second party. So in the instant case the first party has kept back the above important documentary evidence which would have certainly aided this Tribunal to come to a proper conclusion. Therfore when these documents are not produced by the first party it must have inferred that they go against the first party and at the same time they bear out the case put up by the second party. Any way if those documents were produced by the first party they would have certainly proved that the concerned workman had worked for more than 240 days in every year immediately preceding the date of his oral termination from employment. It is nobody's case that termination was brought about by a written order. Thus the termination was brought about orally. It is also not the case of the first party that it has complied with the mandatory requirements contained in the LTFA the Industrial Disputes Act, 1947 at the time of oral termination of the employment of the concerned workman. Hence if this Tribunal comes to the conclusion that the concerned workman was employed and not that contract was given to him. In that case it will have to be held that the Stolen the oral termination of his employment. He continues to be in the service in view of the fact that the first party had admittedly not complied with the mandatory requirement contained in Section 25F of the I.D. Act, 1947. The concerned workman has said that after his termination from service the first party has employed one Jilubha Ratansinh. This is the statement made by him, in his deposition. He has given the name of the person. There is no cross-examintion so far as this apect is concerned. Nobody is examined by the first party agaisnt this allegation. Hence what is stated by him will go to show that the nature of work which he was doing is still there and the first party should have continued to take that work from him. It is not the case of the first party that he was appointed for a particular work and that the work has already reached its completion, he has been relievd. Eex. 14 consists of 15 work orders for the period from 29-12-87 to 4-4-90. They are described as order for work. So they were the orders requiring the concerned workman to do the work as mentioned therein. The work to be done by the concerned workman was described as under:

> "Engaging himself for attending day to day complaints of mason work in respect of all colonies under maintenance of ACD, CPW, A'bad as per direction of Engineer-in-Charge".

Thus it is very clear from the above work order that he was required to engage himself and thus he was required personally to do the work. If a contract is given there will not be a condition to the effect that the contractor himself shall execute the work. If a contract is given the contractor has to get the work done through somebody by employing persons, whereas in the instant case he was not permitted to engage persons. He was instructed to engage himself. This is nothing but a contract of service. Under a contract of service the person has to undertake to do the work personally, whereas in the contract for service this would not be there. This is an important aspect to be taken into consideration. He was ordered to engage himself and so he was required himself to do the work personally. This is wholly inconsistent with the concept of contract, whereas it is completely consistent with the concept of his employment. At the same time when an order for work is given the contractor will be paid lumpsum amount. He will not be paid everyday at the fixed rate. Ex. 14 shows that face value of the work order was fixed at Rs. 640. But then, it was given to understand to the concerned workman that he will be paid at the rate of Rs. 22.65 ps. Thus he was employed on daily wages. This is something inconsistent with the concept of contract. This is something which is very strange. When the contract of work is given to a contractor the work order would not recite that the contractor would be paid a particular amount per day. I am trying to tear off the mask for the purpose of seeing the real face of the transaction between the parties. This work order contains 3 conditions. The first condition is very important. It says that payment of labour will be made as per physical daily presence of work. So, if on a particular day he could not remain present the first party had made it clear that he would not be paid daily wages. This would not be the position when a contract is given. The contractor is not required to remain physically present at the work site as he can appoint persons as supervisors etc. It is not necessary that he should remain present personally. Thus the concerned workman was given employment and that is why he was required to engage himself personally. He was also required to do the work personally. He was told that in case of absence he will not be paid for that day. These are all elements of employment and not elements of contract. The condition further says that he should attend office at 9.00 A.M. to 5.00 P.M. with one hour lunch break for duty. This he was required to attend office. He was given one hour recess time. The hours of work were also prescribed. This is wholly consistent with the concept of employment. When a contract of work is given to a contractor he cannot be compelled to attend office everyday between 9 a.m. to 5 p.m. And independent contractor cannot be compelled to remani present in the office. Thus no independent contract was given to the concernen workman He was employed on daily wages. He was required to remain present in the office. He was personally required to do the work. These are all hard facts emerging from the work order at Ex. 14. Condition No. 2 says that no holidays for payments will be admissible unless specifically asked to attend duties. It

appears that he was told that he will not be paid daily wages on the days which are declared as holidays, but then, he will be paid for those days if he was specifically asked to attend duties. It means that he was given weekly offs and he was told that he will not be entitled to daily wages of those weekly offs. However, he would be entitled to daily wages if he is specifically asked to attend duties. These work orders are for the period from 29-12-87 to 4-4-90. It is pertinent to note that no time limit is mentioned in any work order and still however, the work order was renewed from time to time. The learned advocate of the first party has drawn my attention to Section 2(oo) (bb) of the I.D. Act, 1947 for that retrenchment does not include termination of service of the workman as a result of non-renewal of contract of employment between the employer and the workman concerned. At its expiry of such contract being terminated under a stipulation in that behalf contained therein. Now in this case the work orders at Ex. 14 do not show that said order were given for a definite period and so this provision will not be applicable to the facts of the present case. It is true that said work orders were renewed from time to time but in all subsequent orders no definite time period was mentioned and so it was not necessary to renew the work orders. However, for reasons best known to the first party the first work order and subsequent work orders were renewed from time to time. The work orders do not say that he would be engaged till the completion of the work. As the work orders do not contain any definite period, they were not required to be renewed. If they contained a definite period and if no renewal order was made, this Tribunal would have been required to consider the above provision of law. This is not the position in the instant case. At the same time the issue of work order was a unilateral action on the part of the first party. The work orders cannot be regarded as agreements between the parties. The last work order is dated 4-4-90. It is totally silent about the duration for which the work order was issued and so it was not required to be renewed. If time limit was mentioned therein it was required to be renewed. As no time limit was mentioned therein the question of non-renewal and consequent automatic termination as per the above provisions of law was not required to be considered.

7. Alongwith Ex. 19 there is a statement showing working days, pay, DA etc. This statement will go to show that the concerned workman had worked for nearly about 24 or more than 24 days in every month from June, 1987 to July, 1990 and thus he had worked for more than 240 days in every year, immediately preceding the date of his oral termination from service. The concerned workman has said that though daily wages were fixed the wages were paid to him by the end of the month. However, he was paid of all the days on which he had actually worked in the months at the daily rate mentioned in the work order. This mode of payment will not alter the nature of his employment as daily wager. He was in the nature of daily rated employment or casual employee. The work of mason was taken from him and still however, he was not paid pay and allowance prescribed for the post of mason and thereby the first party had committed breach of principle of 'equal pay for equal work'. Thus the position is very clear that in the guise of work order the concerned workman was employed on daily wages and so notwithstanding the label given in Ex. 14 it will have to be declared that he was employed by the first party. Ex. 14 are not contracts, but then they were contracts of service. Therefore the employment of the concerned workman could not have been terminated abruptly without complying with the mandatory requirement contained in Section 25 of the I.D. Act, 1947. Therefore there does not arise any question of reinstatement of the concerned workman. In such circumstances this Tribunal will have to make a declaration that he continues to be in the service w.e.f. the date of his oral termination and that he shall be entitled to all the consequential benefits including pay and allowances prescribed for the post of mason w.e.f. 1-7-90.

7. In view of what is discussed by me in the above paragraph of this judgement I pass the following order.

ORDER

The present reference is allowed and so it is hereby declared that the concerned workman Shri Ranjitsinh Lalsinh Thakore is deemed to have continued in service w.e.f. 1-7-90 as a mason because his oral termination from employment is found to be in breach of the mandatory requirement contained in Section 25F of the I.D. Act, 1947. The first party is therefore directed to pay to him all the consequential benefits w.e.f. 1-7-90 and more particularyl pay and allowances prescribed for the post of mason from 1-7-90. The first party is directed to pay Rs. 150 by way of cost to the second party and bear its own.

Sd/-

Secretary,

H. R. KAMODIA, Industrial Tribunal

Ahmedabad,

20th October, 1992.

नई दिल्ली 2 नवम्बर, 1992

का.आ. 2909.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरदर्शन मैनेटेनेन्स सेन्टर, जमशेदपुर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण धनबाद नं. 1 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-10-92 को प्राप्त हुआ था।

[एल-42012/49/89—डी 2(बी) पी.डी.)]

के. वी. बी. उण्णी, डैस्क अधिकारी

New Delhi, the 2nd November, 1992

S.O. 2909.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Dhanbad No. I as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Doordarshan Maintenance Centre, Jamshedpur and their workmen, which was received by the Central Government on 28-10-92.

[No. L-42012/49/89-D.II(B)(Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 169 of 1989

PARTIES :

Employers in relation to the Management of Doordarshan Maintenance Centre, Jamshedpur.

AND

Their Workmen

PRESENT :

Shri S. K. Mitra,
Presiding Officer.

APPEARANCES :

For the Employers.—Shri G. Prasad, Advocate.

For the Workmen.—Shri J. D. Lall, Advocate.

STATE : Bihar. INDUSTRY : Doordarshan.

Dated, the 21st October, 1992

AWARD

By Order No. L-42012/49/89-D.II(B)/I.R.(Coal-I), dated the 16th November, 1989, the Central Government in the Ministry of Labour, has in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Doordarshan Maintenance Centre, Jamshedpur in terminating the services of Shri Mihilal Rajwar is justified ? If not, to what relief the workman is entitled ?"

2. The case of the management of Doordarshan Maintenance Centre, Jamshedpur, as disclosed in the written statement-cum-rejoinder, details apart, is as follows :

The present reference is not maintainable and this Tribunal has got no jurisdiction to adjudicate the dispute. The demand of the concerned workman is nothing but a claim for appointment in a permanent post in an indirect way. The claim of the concerned workmen is totally false and fabricated. He has claimed that he was working at T. V. Relay Centre, Saraidhella since 1983, whereas the T. V. Relay Centre, Saraidhella came into existence in the month of August, 1984. The concerned workman never worked regularly in the T. V. Relay Centre, Dhanbad. He was paid regularly for the number of days he worked there as casual workman and nothing is due to him. He has never put in service the required number of days in a calendar year and so his claim for any benefit under the Industrial Disputes Act is not sustainable. The management was justified in not retaining him in service.

3. The case of the concerned workman, Mihi Lal Rajwar, as appearing in his written statement, briefly stated, is that he belongs to Scheduled caste community and is permanent resident of Dhanbad district. He started working in Dhanbad T. V. Relay Centre, Saraidhela, as daily rated Mazdoor and worked on electric wiring maintenance and 5 K. V. A. Diesel Generating set at the Centre. He was given appointment by Asstt. Engineer, LPT T. V. Relay Centre, Koyla Nagar, Dhanbad. The maintenance work at Dhanbad T. V. Relay Centre is under the over-all control of Jamshedpur T. V. Maintenance Centre. He worked continuously and regularly at Dhanbad T. V. Relay Centre since January, 1983 till December, 1985, but was not paid his wages at the rate of Rs. 15 per day from January, 1983 till June, 1984 and then from September, 1985 to December, 1985. However, he was paid his wages from July 1984 to August, 1985. When he demanded his wages for the period aforesaid he was always assured that his case had been referred to T. V. Maintenance Centre, Jamshedpur and when clearance/approval would come he would be paid his wages. He was stopped from duty by the Asstt. Engineer T. V. Relay Centre, Dhanbad from sometime in December, 1985 and since then he has been sitting idle. No reason was assigned or notice was given for abrupt stoppage of work. One Gouri Shankar who was working along with him on daily rated basis and who was junior to him has been retained but his services have been dispensed with illegally and without any valid reason. Dhanbad T. V. Relay Centre is under the control of Doordarshan under the Ministry of Information & Broadcasting and is an industry within the meaning of definition 'Industry' in the Industrial Disputes Act and the provision of the Industrial Disputes Act are applicable to the workmen working in Doordarshan including Dhanbad T. V. Relay Centre. He has put more than 240 days attendance in each year since 1983 till December, 1985. Therefore, termination of his service is without complying with the provision of Section 25-F of the Industrial Disputes Act is illegal and void. The management has violated Sec. 25-G of the Industrial Disputes Act which also makes termination of his service illegal and void inasmuch as one Gouri Shankar who was junior to him has been retained. In the circumstances, the concerned workman has prayed that the action of the management in terminating his service be held to be illegal, void and non-est and the management be directed to reinstate him in service with continuity and full back wages.

4. In rejoinder to the written statement of the concerned workman, the management has denied and disputed that the concerned workman worked in T. V. Relay Centre from January, 1983 to December, 1985. The management has reiterated that the T. V. Relay Centre came into existence in August. 1984 and so there was no question of engaging the concerned workman in January, 1983. The concerned workman has got no right to claim any right or notice for the stoppage of work. The Industrial Disputes Act, 1947 has no application in the present dispute and as such this Tribunal has got no jurisdiction to adjudicate upon this dispute.

5. In rejoinder to the written statement of the management, the concerned workman has reiterated the statements of facts as reeled of in his written statement.

6. The management, in order to justify its action, has examined D. C. Sahu, posted as Accountant in Doordarshan as MW-1 and laid in evidence some items of documents which have been marked Exts. M-1 to M-7.

On the other hand, the concerned workman has examined himself and laid in evidence two items of documents which have marked Exts. W-1 to W-2.

Mr. F. Kujur earlier posted to Dhanbad Doordarshan Kendra as Asstt. Engineer has been examined as Court witness.

7. The case of the management is that Doordarshan is not an 'industry' and provision of Industrial Disputes Act are not applicable to the workmen working in Doordarshan. It is further the case of the management that since the concerned workman has raised the present dispute under the provision of Industrial Disputes Act, it is not maintainable and this Tribunal has also got no jurisdiction to adjudicate upon the present dispute.

'Industry' has been defined in Sec. 2(j) of the Industrial Disputes Act, 1947. The import of this definition was interpretated by Hon'ble Supreme Court in the case of Bangalore Water Supply and Sewerage Board VS. A. Rajappa ors. reported in 1978 Lab. I.C. 467=1978 (I) LLJ. 349. The majority of the judgement was delivered by Mr. Justice V. R. Krishna Iyer. The Hon'ble Court held that (a). Where (i) systematic activity, (ii) organised by co-operation between employeyr and employee (the direct and substantial element is commercial), (iii) for goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or food) prima facie, there is an industry in that enterprise, (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector, (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations, (d) If the organization is a trade or business it does not cease to be one because of philanthrophy animating the undertaking.' If it is found that there is systematic activity organized by co-operation between employer and employee for the production and/or distribution of goods, then there should not be any difficulty in holding that the department concerned, unit or undertaking thereof shall be an 'industry'. If, however, there is systematic activity, organized by co-operation between employer and employee for services to satisfy human wants then whether the services are in the nature of trade or business has to be examined. If the services are analogous to trade or business, then the Department, unit or undertaking thereof shall be deemed to an 'industry'.

Admittedly, Doordarshan renders service to satisfy human wants and this service is rendered by systematic activity, organized by co-operation between employer and employee. These services are in the nature of trade or business or analogous to trade or business. It is also a commercial venture. That being so, I am constrained to hold that Doodarshan is an 'industry' and so the present dispute is maintainable and this Tribunal has got jurisdiction to ad-

judicate upon the issue of termination of service and the concerned workman by the management of Doordarshan.

8. The management has produced an opinion on the issue as to whether All India Radio is an 'industry' or not (Ext. M-5). It appears that the opinion, so provided, is strutted down from the judgement of Mr. Justice H. M. Beg who concurred with the majority judgement rendered in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa & ors. with same reservation. Mr. Justice Iyer in his judgement has held—'(i) Notwithstanding the previous clause, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies. (ii) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j), (iii) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.' So this document, according to me, is of no assistance to the management. This being so, I consider that Doordarshan is an 'industry' and the dispute raised by the concerned workman is maintainable.

9. The management's further case is that the claim of the concerned workman is not justified on factual basis also According to the management the claim of the concerned workman that he was working in T. V. Relay Centre, Saraidhela since 1983 is patently false as T. V. Centre has come into existence in the month of August, 1984. MW-1 D. C. Sahu who is posted as Accountant in Doordarshan, has stated that the concerned workman had worked for 39 days in 1984 and 196 days in 1985. On the other hand, the concerned workman has claimed that he worked in T. V. Relay Centre at Saraidhela, Dhanbad from January, 1983 when it was in the process of construction till December, 1985. He has of-course could not produce any document in support of his claim. The management has produced a document signed by Station Engineer, Doordarshan Maintenance Centre at Jamshedpur showing attendance of the concerned workman for 301 days from 1-10-84 to 30-7-85 Ext. M-1). All controversy in the matter has been set at rest by F. Kujur, who was posted to Dhanbad Doordarshan Kendra from 1-4-84 to July, '88 as Astt. Engineer. According to him, the concerned workman worked in T. V. Centre, Dhanbad, from July, 1984 to August, 1985 as casual workman and during this period he put in attendance for 200 days. But the comments submitted by Shri Kujur to the R. L. C. (C) when the dispute was raised by the concerned workman discloses that the concerned workman put in attendance for 301 days from July, 1984 to August, 1985. Thus, it is seen that the concerned workman worked for 301 days from July, 1984 to August, 1985 (Ext. W-1). This document shows that he had worked more than 240 days during a period of 12 calendar months before his services were dispensed with. The concerned workman was retrenched from service and it is mandatory duty of his employer to comply with Sec. 25-F of the Industrial Disputes Act which lays down the condition precedent to retrenchment a workman. Evidently, the management of Doordarshan has not complied with this condition precedent. That being so, the termination of service of the concerned workman must be held to be illegal.

10. Another issue has been raised by the concerned workman. He has complained that one Gouri Shankar junior to him has been appointed on regular basis whereas he was left out. It appears that this Gouri Shankar was appointed by the management through interview and his name was sponsored by the Employment Exchange. The concerned workman was having Exployment Exchange Card, but his name apparently was not sponsored by the Employment Exchange. I fail to fathom any discriminatory attitude of the management in appointing Gouri Shankar on regular basis.

11. Admittedly, the concerned workman was engaged on casual basis. Even so, casual workmen were entitled to be reinstated in service if termination of their services is not justified. I have already held that the termination of service of the concerned workman is not justified. Hence, he is entitled to be reinstated in service with full back wages from the date of reference i.e. 16-11-89.

12. Accordingly, the follwoing award is rendered—the action of the management of Doordarshan Maintenance Centre, Jamshedpur in terminating the services of Mihi Lal Rajwar is not justified. The management of Doordshan Maintenance Centre, Jamshedpur is directed to reinstate the concerned workman in service with effect from the date of reference i.e. 16-11-89 with full back wages.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer

नई दिल्ली, 26 अक्तूबर, 1992

का.आ. 2910.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-92 को प्राप्त हुआ था।

[सं. एल-12011/20/89-डी-2(ए)]

वी. के. वेणुगोपालन, डैस्क अधिकारी

New Delhi, the 26th October, 1992

S.O. 2910.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workmen, which was received by the Central Government on 22-10-1992.

[No. L-12011/20/89-D.II(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 22 of 1989

PARTIES :

Employer in relation to the management of Bank of Baroda.

AND

Their Workmen.

APPEARANCES :

On behalf of management : Mr. L. N. Basak, Senior Manager (Personnel).

On behalf of workmen : Mr. A. Chatterjee, Joint Secretary, Bank of Baroda Employees' Union and Mr. R. G. Chatterjee, General Secretary, Bank of Baroda Employees' Association.

STATE : West Bengal. INDUSTRY : Banking.

AWARD

A dispute arose over the action of the Management of Bank of Baroda (hereinafter referred to as the Bank), in reducing the payment of Washing Allowance (hereinafter referred to as the said allowance), from Rs. 30 per month to Rs. 22.50 per month and on the basis whereof, the said Bank also effected recovery of the amount already paid, from all their subordinate staff, who were provided with four sets of uniforms and were performing outdoor duties. The

justifiability of such action of the said Bank, was referred for adjudication to this Tribunal, by an Order of Reference No. 12011/20/89-D.III(A) dated 21st July, 1989, made under section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act), with a further direction to determine, the reliefs, the workmen were entitled to receive.

2. There were two separate Written Statements filed by the workmen viz. one represented by the Bank of Baroda Employees' Association (hereinafter referred to as the said Association), for whom, Mr. R. G. Chatterjee appeared and the other, represented by Bank of Baroda Employees' Union (hereinafter referred to as the said Union), for whom, Mr. A. Chatterjee appeared.

3. It was the case of the said Association that the Industry-wise "Settlement" dated October 19, 1966 (hereinafter referred to as the First Settlement), provided that all permanent sub-staff (hereinafter referred to as the said Staff), whatever be the nature of duties, should be provided with two sets of 'Summer Uniforms' per year and notwithstanding such settlement, the said Bank, have all along provided the said staff, performing out-door duties, three sets of such Uniform per year.

4. Thereafter, there was another Industry-wise settlement dated October 31, 1979 (hereinafter referred to as the Second Settlement), as a result whereof, the said staff, received payment of Rs. 10 with effect from October 1, 1979, on account of the said allowance, but even in spite of such agreement, the said Bank has paid a sum of Rs. 15 per month to the said staff, attending out-door duties. It has been stated that the Second Settlement was subsequently modified on September 14, 1984 (hereinafter referred to as the Third Settlement), whereby, the said allowance of Rs. 10 was enhanced to Rs. 15 per month and the said Bank, started paying the said allowance @Rs. 22.50 p per month, with effect from September 1, 1984, to all the members of the said staff, performing out-door duties and who were receiving three sets of uniforms, in terms of the First Settlement.

5. The said Association has stated that there was another Settlement dated January 5, 1987 (hereinafter referred to as the Fourth Settlement), which modified the First Settlement and provided with 3 sets of Terry Cotton summer uniforms for every 2 years, as against 2 sets of non-Terry Cotton uniforms every year and consequent upon such settlement, the said Bank started provided with 4 sets of Terry Cotton summer uniforms per every 2 years, to the said staff as against 3 sets, as agreed and it has also been stated that consequent upon the Fourth Settlement, the said Bank started paying the said allowance, (1) at the rate of Rs. 30 per month to all the members of the said staff and (2) at the rate of Rs. 22. to all other subordinate staff. Such payment, it has been stated, to have initiated from March/April 1967, though the provisions of the Third Settlement i.e. the said allowance to be paid @Rs. 15 per month, was not modified in any manner and by any subsequent settlement or Awards or otherwise.

6. The said Association has stated that the Third Settlement, which provided for payment of Rs. 15 per month, to the said staff, was, however, modified by another Settlement dated April 10, 1989 (hereinafter referred to as the Fifth Settlement), whereby the said allowance was enhanced to Rs. 25 per month from Rs. 15 per month, for all the permanent members of the said staff and consequent thereto, the said Bank had decided to pay with effect from January 1, 1987, the said allowance @Rs. 33.30 p per month, to all the members of the said staff performing outdoor duties. This decision, the said Association has claimed to have also been given effect to.

7. On the above facts, the said Association indicated that ever since 1966, the said staff, attending outdoor duties, were receiving (1) one additional set of Summer Uniform over and above what was prescribed in the Settlement at arrived at and in force from time to time, and (2) the said allowance at proportionately higher rate, having regard to the number of uniforms prescribed under such settlements, were and are actually receivable by them. It has also been alleged that such allowance at higher rates, as made available since 1966, has become conditions of service and terms of employment of the said staff and as such, the same cannot be altered to their prejudice, without complying with or following the provision of Section 9A of the said Act. It was claimed that such allowance, being a compensatory one, would be covered by item 3 of the Fourth Schedule of the said Act and as such also, will come within the perview and scope of Section 9A as aforesaid.

8. It has been alleged that the said Bank, without any reason and basis or justification and notice under Section 9A of the said Act, has reduced the rate of the said allowance to the said staff, attending out door duties, from Rs. 30 per month to Rs. 22.50 p per month, with effect from March/April 1987 and that too, upto December 1988 and further, has recovered the difference for that period. It has also been alleged that such recovery was made, even after this Reference, as made in this case. It has also been claimed that such amount as recovered, were and are payable by the said Bank and as such, prayer has been made for such payment.

9. The Written Statement of the said Union, substantially agreed with that of the said Association and as such, I feel, that repetition of the same, will not be necessary or required and that too, to avoid prolexity.

10. In their Written Statement, the said Bank has indicated that the terms of service and conditions of employment of employees are being governed by the Sastry and Desai Award, as modified from time to time by Industry-wise Settlements, apart from Settlements as arrived, at the Bank's level and the local management of the said Bank, would be bound lay man and so also the other administrative Circulars, guidelines and instructions as issued from time to time. They have agreed that the First Settlement provides that all full time and part-time members of the said staff, will get two sets of Cotton uniforms every year and one set of woollen uniform once in a block of three years and also stated that those staff, will also be entitled to uniforms and those employed in Area-I, shall be paid Rs. 3.30 p. per month and for employees in other areas, the said allowance will be @ Rs. 3 per month. It should be noted here that neither party to this proceedings, has tendered any evidence, regarding such areas or the extent of them. It has also been indicated that such allowance by Industry-wise Settlement dated November 8, 1973, to the extent that, the said staff, as entitled to uniforms, shall be paid the said allowance @ (1) Rs. 5 per month in Area-I and in places where House Rent Allowance is payable and (2) Rs. 4.50 p. per month, in all other centres. The said Association has not of course duly mentioned the above settlement in their Written Statement.

11. The said Bank has of course stated that by the Second Settlement, it was decided that the said allowance will be paid to the said staff, who are entitled to uniforms @ Rs. 10 per month, at all the centres and thereafter, by the Third Settlement, the said allowance was raised to Rs. 15 per month, for all the centres, with effect from September 1, 1984 and so long the said allowance was paid @ Rs. 15 as mentioned, the number of cotton uniforms and woollen uniforms were restricted to 2 sets and one set respectively and as mentioned earlier, the said Bank has further stated that the number of the sets of the uniforms were increased from 2 cotton sets to 3 sets of Terry Cotton Uniforms for summer, for every two years and under the Fourth Settlement, the provisions for payment of the said allowance @ Rs. 15 per month remained unchanged and was not modified till such time when the claim was raised by the said staff.

12. It was also the case of the said Bank that through mistake and erroneously, some of the Branch, but not at all and so also the said bank, enhanced the said allowance on pro-rate basis, considering the no. of the sets of uniforms, though, as per Industry-wise and Bank level Settlements, there was or has been no mention or any stipulation for the said allowance at pro-rata basis or per set of uniform and as such, the action of some of the Branches, were not authorised and as such, the said Bank decided to reduce the same and also to recover the excess allowance paid to the said staff towards the said allowance, at the rate of per set of uniform. It was further stated and that too, in my view, with due justification that such action on behalf of or by some Branches, in the matter

of enhancement, as indicated, cannot be deemed to be or considered as forming the general terms of service and conditions of employment of all the said staff, the more so when, there was or has been no declaration either by a Circular, Order, Notice or otherwise to that effect. In fact, there has been no proper or due evidence on that point, tendered either by the said Association or the said Union or the said Bank, as the parties to the dispute, elected not to tender any oral evidence and the employees, only produced Ext. W-1, a Circular bearing No. 81/255 dated June 2, 1989.

13. It was the case of the said Bank that such stoppage of payment, which was wrongly made, on account of the said allowance and consequential recovery, cannot be deemed to be any alteration of the terms of service and conditions of employment of the said staff and as such, the claim on account of violation of Section 9A of the said Act, has no basis or justification and it should be held and observed that the said Bank's action in making payments duly and uniformly on the line of the settlements as indicated, was reasonable, fare, bona fide and justified. The above mentioned Ext. W-1, was a circular from the Chief Manager, Staff Administration of the said Bank, in respect of a clarification of the 5th Bipartite Settlement, regarding payment of the said allowance to the said staff and Special reference to paragraphs 3 and 4 of the same, was made on behalf of the employers, the terms whereof, are quoted hereunder :—

"3 It has been decided that sub-staff members who are supplied with additional set of uniforms (i.e. 4 sets of uniforms) may be paid proportionate additional washing allowance of Rs. 8.35 p.m. over and above the limit of Rs. 25 p.m. fixed vide Cir. No. 81/78 dated the 28th April, 1989.

4 In view of above, payment of washing allowance, as above may be made to sub-staff concerned for the additional set of uniform provided to them. This would be effective from 1st January, 1989 or the date of providing the additional set whichever is later."

14. On the basis of the pleadings of the said Bank, there is no dispute about the existence of the Awards and Settlements as indicated earlier and that, some concessions/extensions of the benefits as indicated, were given. But, even then, it appears that all the statements and those concessions/extensions, have not been admitted in fact and thus the onus to prove shch concessions/extensions, which were on the said Association or the said Union, have not been duly discharged or proved. It is true and as agreed by the said Bank that such extensions/concessions were allowed, not by the said Bank, but by some of their Branches, whose particulars was not also available, but such concessions, as given by a Branch, cannot certainly be applicable to all the Branches of the said Bank and all the said staff, under them. I may have it on record that by not mentioning and indicating, when and in which Branches those concessions/extensions have been given, the said Association and so also the said Union, supporting them, intended to mislead the Tribunal.

15. It was submitted by the said Association that the said Allowance varied from time to time, on the basis of Bipartite Settlements and such fact, Mr. Chatterjee pointed out, was not really disputed by the said Bank. In support of his submissions, he referred to the 5 Settlements as indicated earlier, but as pointed out, it must be kept on record that neither the said Association nor the said Union, have pleaded regarding the settlement dated November 8, 1973, in between the first and second settlement. I have also indicated my views in respect of non-disclosure of such settlement. It was Mr. Chatterjee's further submission that the sudden reduction of the said allowance or the recovery thereafter, was not only improper, but the same was illegal, unilateral and arbitrary. He further submitted that the said Bank, first pleaded the case of mistake, but such mistake has not been established by them and Ext. W-1 as indicated earlier, will ex facie show, the avowed policy of the said Bank and there is no ambiguity. He further submitted that Paragraph 10 of the said Association's statement, will further establish the above fact.

16. In view of the above, it was claimed by Mr. Chatterjee that to receive the said allowance, not only by implication, but also directy, become a condition of service of the said staff and as such, without taking recourse to Section 9A of the said Act, such advantage as received by the said staff, which again, became their terms of service and conditions of employment, could not have been changed. In support of the submission as above, Mr. Chatterjee first relied on the determinations in the case of Management of Indian Oil Corporation Limited Vs. Its Workmen, 1975(2) LLJ 319. That was a case, where the employees concerned were being paid Compensatory Allowance by Indian Oil Corporation, as substitute of the House Rent Allowance. A question arose, whether such enjoyment, impliedly became the conditions of service of the employees and as such, if, unilateral cancellation of such payment of allowance, was tenable under Section 9A of the said Act and it has been observed in the facts and circumstances of the case, that, the grant of Compensatory Allowance became an implied term of service and further, unilateral withdrawal of the same by the employer, would adversely affect the interest of workers and it was also observed that Compensatory allowance, in the facts and circumstances of the case, was not paid in substitution of House Rent Allowance. Mr. Chatterjee, secondly referred to the case of Workmen of Hindusthan Lever Limited Vs. Management of Hindusthan Lever Limited 1984(2) LLJ 391, where it has been observed that the principles of Res Judicata, do not apply under Industrial Disputes Act, but principles analogous thereto, would apply. It has also been observed in that case that even if the agreement by the employer was to raise the question of status of the employees before Tribunal, there would be no estoppel, as there cannot be any estoppel against Statute and the Tribunal, cannot decide the jurisdictional fact. The second case as indicated above, in my view, would not strictly apply or help in this case. In support of his submissions, Mr. Chatterjee further indicated that the First Settlement, which was arrived at on October 19, 1966, continued for about 4 years, since when the said staff were enjoying the privileges of such Allowance. He further indicated that such allowance meaning thereby Compensatory allowance, will come under the Fourth Schedule of the said Act and more particularly in Serial No. 3 thereunder and as such also, the said Bank could not authoritatively take away the benefits so long enjoyed by the said staff and which in terms, became the condition of service and terms of their employment, by long user and more particularly when, the Fourth Schedule has been framed under Section 9A of the said Act. Mr. Chatterjee submitted that even if such submission of his as mentioned above, fail, when the case of the said staff would come under serial No. 8 of the said Fourth Schedule, which deals with withdrawal of any customary concession or privilege or change in usage.

17. The said Union adopted the above submissions of the said Association and in addition thereto, submitted that the action of withdrawing the said allowance by the said Bank, was whimsical and unilateral. It was also claimed by them that the subsequent deductions as made or on the basis, on which deductions were made, was bad and as such, the present Reference, according to them was duly and justifiably made, as the uniforms as mentioned hereinbefore, were supplied by the said Bank, not only under the Sastri and Desai Awards, but also under the settlements as indicated by Mr. Chatterjee, appearing for the said Association and as such, and also because for long user, the entitlement of such benefits, became a service conditions of the said staff and to establish the submissions as above and also the enjoyment of the said staff of the said allowance Rs. 22.50 p. per month i.e. at the rate of Rs. 750 p. per set viz. proportionate changes/costs, were payable by the said Bank and in support, the said Union made a Reference to Annexure "A" to their written statement. It was then submitted by the said Union that the fact of such enjoyment of the said allowance, would also appear from Annexure "B" to their Written Statement and according to the said Union, such grant was not ofcourse applicable for whole of India, but, to all Branches in Calcutta City Region. The said Union also submitted that in view of the above, the said Bank, as submitted also by the said Association, has

violated Section 9A of the said Act and deductions as made, have admittedly constituted, change in the terms of service and conditions of employment of the said staff, at least, so far the aforementioned Calcutta Region was concerned.

18. The said Bank submitted that the issue under reference related to the said allowance no doubt and according to them, the question would be, whether the same should apply to the Calcutta Region Offices or throughout India It was submitted by Mr. Basak that the amendments or changes as evolved, were made in consultation with the Unions concerned and in 1987, there was an industrial settlement, whereby the number of uniforms as supplied, were not increased from 3 to 4, but 3 sets were allowed on the basis of Bipartite Settlement, to which the Unions as involved, were parties/signatories and therefore, it was claimed that they cannot authoritatively or justificably, raise this dispute. It was submitted by Mr. Basak, that the question of Section 9A of the said Act, would not come into operation or play, as every thing was done on the basis of settlements and in the manner as indicated and there was really no change of these terms.

19. The above submissions of non availability or applicability of Section 9A were denied or disputed.

20. As indicated earlier, there was really no evidence tendered by any of the patries, excepting the tendering of Ext. W-1. I have already indicated that the onus, on the basis of the submissions as recorded, was on the Unions concerned and more particularly when, the validity of the number of uniforms or pro-rata payment of the said allowance to them, was disputed and when such a dispute was raised and that too on the basis of the pleadings of the said Bank, which were known to the Unions before the case was taken up for consideration, they in my view, should have tendered such or any evidence to support their cases and to discharge the onus, which lay very heavily on them. Since such onus has not been duly discharged, it cannot but and should be held that the case under consideration was not proved beyond any reasonably doubt or proved to the hilt.

21. It should be held that even on the pleadings and so also the circumstances of the case it, cannot be discussed that, to have the said allowance at the pro rata basis, has at all been duly proved on the basis whereof, it can also be held that such or any entitlement in this case, became a terms of service or conditions of employment of the said staff. It must also be kept on record that since no party can take advantage of its own wrong, so the said Bank, is expected not to recover the excess payments as made to the said staff, as the said staff, who are generally expected to have spent the amount as received, for washing the uniforms, will be very hard hit, if such amount is required to be repaid now by way of deductions. One thing should also be remembered here that in a case of this nature, why the said Bank but anybody, who is required to pay such amount on such or any allowance, may also require the receipents to give necessary account of the amount as received, being actually spent, as otherwise, there is every possibility of misuse of public money. Even inspite of the acts and actions of some of the Branches of the said Bank, I feel, the said allowance has not ripend into terms of service and conditions of employment of the said staff. I find that even Ext. W-1, will not be enough to have the necessary pro-rata increase or payment, for all the said staff, as the said exhibit is a conditional one and has, limited scope and application. The parties should, in a case like this, be found strictly by the terms of agreement and not otherwise or on the basis of any concessions. The pro-rata basis of payment of the said allowance, is not certainly governed and guided by any Industry-wise and Bank level settlement and there is in fact, no mention or any stipulation for payment of the said allowance, on such basis of per set of uniforms, as clamled.

22. As such, this reference is answered in the negative and that too in the circumstances as discussed and disclosed and also for paucity of legal evidence.

23. This is my Award.

Dated, Calcutta,

The 22nd September, 1992.

MANASH NATH ROY, Presiding Officer

नई दिल्ली, 29 अक्तूबर, 1992

का.आ. 2911.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, केनरा बैंक के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 26-10-92 को प्राप्त हुआ था।

[संख्या एल-12012/22/90-आई. आर(बी-II)]

वी. के. वेणुगोपालन, डैस्क अधिकारी

New Delhi, the 29th October, 1992

S.O. 2911.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the Management of Canara Bank and their workmen, which was received by the Central Government on the 26-10-92.

[No. L-12012|22|90-IR(B.II)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Friday, the 9th day of October, 1992

PRESENT :

Thiru M. Gopalaswamy, B.Sc., B.L.,
Industrial Tribunal.

Industrial Dispute No. 43 of 1990

(In the mater of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the management of Canara Bank, Madurai).

BETWEEN

Thiru M. Kannan,

12-A, Venkataraman, Poojari Lane,
Chinthamani Road, Madurai-625001.

AND

The Deputy General Manager (DAL),
Canara Bank, St. Marya Campus,
East Vell Street, Madurai-625001.

REFERENCE :

Order No. L-12012|22|90-IR B.II, dated 31-5-1990 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on this day for final disposal in the presence of Thiruvalargal T. S. Gopalan, P. Ibrahim Kalifulla, S. Ravindra and M. C. Sriniyasavarathan, Advocate appearing for the mangement, upon perusing the reference, claim and counter statements and other connected papers on record and the workman is represented to be dead this Tribunal passed the following.

AWARD

This dispute between the workman and the management of Canara Bank, Madurai arises out of a reference under

Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India, in its Order No. L-12012|22|90-IR B.II dated 31-5-1990 of the Ministry of Labour, for adjudication of the following issue :

"Whether the action of the management of Canara Bank in dismissing Shri M. Kannan, Peon from service is justified ? If not, to what relief the concerned workman is entitled ?"

(2) Petitioner-workman Thiru N. Kannan has filed a claim statement praying to reinstate him in service with back wages, continuity of service and attendant benefits. In repudiation thereof, the Respondent-Management filed their counter statement denying the allegations made in the claim statement.

(3) After Several adjournments, when the dispute was called on 15-7-1992, it was represented that the petitioner-workman is dead.

(4) Today when the dispute was called, no representation was made for the decesed workman Thiru K. Kannan.

(5) Hence industrial dispute is dismissed.

Dated, this 9th day of October, 1992.

M. GOPALASWAMY, Industrial Tribunal

नई दिल्ली, 29 अक्तूबर, 1992

का.आ. 2912.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्धनियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-10-92 को प्राप्त हुआ था।

[संख्या एल-12012/155/85-डी-2(ए)]

वी. के. वेणुगोपालन, डैस्क अधिकारी

New Delhi, the 29th October, 1992

S.O. 2912.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bombay as shown in the Annexure in the Industrial dispute between the employers in relation to the Mgf. of Bank of India and their workmen, which was received by the Central Government on the 26-10-92.

[No. L-12012|155|85-D II(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

PRESENT :

Shri P. O. Apshankar Presiding Officer.

Reference No. CGIT-2/17 of 1986

PARTTIES :

Employers in relation to the management of Bank of India.

&

Their Workmen

APPEARANCES :

For the Employer :—Shri R. B. Pitale, Representative.

For the Workman.—Shri A. R. Phoujdar, Representative.

INDUSTRIAL:—Banking. STATE:—Maharashtra.

Bombay dated the 7th October, 1992

: AWARD :

The Central Government by their order No. L-12012 (155)/85-D.II(A) dated 14-4-1986 have referred the following Industrial Dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Dispute Act, 1947.

"Whether the action of Zonal Manager, Bank of India, Pune in not taking into account temporary period of employment from 4-8-1974 to 2-10-1974 as a part of probation period of Shri A. M. Jadhav, Agriculture Clerk in accordance with provisions of para 20.8 of Bipartite Settlement of 19-10-1966 is justified and legal ? If not, to what relief the workman is entitled ?"

2. The case of workman Shri A. M. Jadhav, as disclosed from the Statement of Claim (Ext. W-2) filed on his behalf by the Joint Secretary of the Bank of India Workers' Organization in substance is thus :

The service conditions of the bank employees are governed by the provisions of Shastri Award. Desai Award and the different Bipartile Settlements. As per para 23.15 of the Desai Award, "Probationer means an employee who is provisionally employed to fill a permanent vacancy or post, and has not been made permanent or confirmed".

As per para 20.8 of the Bipartite Settlement of 1966, "A temporary workman may also be appointed to fill the permanent vacancy but that temporary appointment shall not exceed a period of three months during which the bank shall make arrangements for filling up the vacancy permanently. If a temporary workman who is appointed to fill in a permanent vacancy is eventually selected for filling up a vacancy, the period of such temporary employment will be taken into account as a part of probationary period". The said workman Shri A. M. Jadhav was temporarily appointed on 1-8-1974 to 31-8-1974 for a period of one month as an Agricultural Clerk at the Rashiwada Branch of the Bank, District-Sangli. He was further appointed on temporary post for a period of one month from 3-9-1974 to 2-10-1974. He was again appointed on temporary post for a period of one month from 4-10-1974 to 3-11-1974. Thereafter he was taken on probation on 4.10.74, and thereafter he was confirmed in the services on 4-4-1975. He was working on the same post at the same branch since his first date of appointment in the bank. In view of the said provisions of the Bipartite Settlements, as the said workman was probationally appointed to fill in a permanent post he should have been deemed to be a 'Probationer' within the meaning of the term 'Probationer'. However the bank management failed to treat him as a probationer. He should have been taken on probation with effect from 4-8-1974, instead of from 4-10-1974 and should have been confirmed on 4-2-1975 instead of on 4-4-1975 after taking into consideration his permanent services of the period of two months.

3. The said workman had made representations to the bank in July 1983 for the redressal of his grievance, but the management did not properly consider it. Thereafter the Joint Secretary of the Bank of India Workers' Organisation of which the said workman is a member sent a letter to the bank management regarding the said grievance of that workman, but the bank management did not reply to it. Thereafter an industrial dispute was raised by the said organization before the Assistance Labour Commissioner (Central), Pune. As the Conciliation proceedings ended in failure, the Central Government made the reference as above.

4. The said organization therefore prayed that the Tribunal should hold that the action of the management of the bank in question in not treating the said workman as a 'Probationer' from 4-8-1974 and not confirming him on 4-2-1975,

as unjust and illegal and further, this Tribunal should direct the bank management to treat that workman on probation with effect from 4-8-1974, and to treat him to be confirmed on 4-2-1975 and should pay him all the incidental benefits the from the date of probation i.e. 4-8-1974.

5. The Bank Management by their Written Statement (Ex. M/6) opposedl the said claim of the said organization, and in substance continued thus :

The Bank of India Workers' Organisation who has raised the dispute in question has no locus-standi to espouse the cause for and on behalf of the said workman, and that organization is not competent to file the Statement of Claim for and on behalf of the said workman. The majority of the workmen employed by the bank are the members of the Bank of India Staff Union, Pune, which is affiliated to All India Bank Employees Association. This Staff Union is the majority union which represents about 90 per cent employees of the bank, and it is the sole Collective bargaining agent. The said organization which raised the dispute in question is the minority union. The said majority union has no dispute with the bank over the dispute in question. As such, no industrial dispute between the bank management and the workmen as a class, as contemplated under Section 2(k) of the Industrial Disputes Act, exists in the present case. The demand of the organization in question is belated as the demand has been made 10 years after the cause of action, and as such the demand of the organization should be rejected on that ground alone. In the Order of reference there is an error in the period of employment from 4-8-1974 to 2-10-1974. The true and correct period is 1-8-1974 to 2-10-1974 with three days break, i.e. 1-9-1974, 2-9-1974, 3-10-1974. Unless the said order is rectified, the present reference is not competent.

6. The bank management further contended thus :

The said workman Shri A. M. Jadhav was temporarily appointed from 1-8-1974 to 31-8-1974 for one month as an Agricultural Clerk, at Rashivade Branch of the bank, District Sangali. He was further appointed on temporary basis for a period of one month from 3-9-1974 to 2-10-1974. He was again appointed on a temporary basis for a further period of one month from 4-10-1974. At the time of the employment he was appointed purely on temporary basis, and no assurance was given to him that he will be absorbed on permanent basis. From 4-10-1974 he was kept on probation for a period of six months, and was thereafter confirmed in the bank services on 4-4-1975. It is not true that the said workman was provisionally appointed to fill in a permanent vacancy and as such, should have been deemed to be a 'Probationer'. The Agent/Manager of the bank has no authority to appoint any employee on permanent basis. That power then vested in the Area Manager, Kolhapur. Every employee in the clerical cadre appointed on permanent basis is required to undergo a probationary period of six months, and only thereafter on completing satisfactory work, he is confirmed in the employment of the bank. There is a break between the appointment of the said workman on temporary basis of the period prior to 4-10-1974 and his appointment on regular basis from 4-10-1974. His appointment on regular basis from 4-10-1974 is independent of his appointment on temporary basis prior to 4-10-1974, and there is no relation between them. The period of previous employment would not extend beyond 4-10-1974, as it was temporary employment. Therefore the bank management lastly prayed for the rejection of the prayer of the said organization.

7. The Issues framed at Ex. 8 are :

(1) Whether the Bank of India Workers' Organisation has locus standi to espouse the cause for and on behalf of the worker Shri A.M. Jadhav ?

(2) Whether no industrial dispute within the meaning of the Industrial Disputes Act exists between the said Bank and the workmen as a class ?

(3) Whether the demand of the said organization made 10 years after the cause of action, is sustainable in law ?

(4) What are the correct dates of the employment of the said worker on temporary basis ?

(5) Whether the appointment of Shri Jadhav on regular basis from 4-10-1974 is independent of his appointment on temporary basis prior to 4-10-1974 and there is no link between them ?

(6) Whether the action of Zonal Manager, Bank of India, Pune in not taking into account temporary period of employment from 4-8-1974 to 2-10-1974 as a part of probation period of Shri A.M. Jadhav, Agriculture Clerk in accordance with provisions of para 20.8 of Bipartite Settlement of 9-10-1966 is justified and legal ?

(7) If not, to what relief the workman is entitled ?

(8) What Award ?

8. My findings on the said issues are :

(1) Yes.

(2) Industrial dispute existed.

(3) Yes.

(4) As mentioned in the orders of appointment.

(5) No.

(6) No.

(7) As per Award below.

(8) As per final order below.

REASONS

9. The workman Shri A. M. Jadhav filed his affidavit in support of his case at Ex. 10 and filed his further affidavit at Ex. 11. Shri S. D. Tambe, the Organizing Secretary of the Bank of India Workers' Organisation i.e., the union in question, filed his affidavit regarding the unions of the bank at Ex. 13. Both these witnesses were cross-examined on behalf of the Bank management. Shri R. M. Savle, the Industrial Relations Officer of the bank, filed his affidavit at Ex. 15, and filed his further affidavit at Ex. 16. Shri H. J. Kadam, the then Manager of the Rashivade Branch filed his affidavit in support of the case of the bank at Ex. 18. Both these two witnesses were cross-examined on behalf of the said organization.

10. The material evidence on record is thus : The workman Shri A. M. Jadhav in substance stated in the affidavit (Ex. 10) thus :

"I joined the services in the bank at Rashivade branch, Distt. Sangli, on 1-8-1974 as Agricultural Assistant. I had applied to the bank for the post of an Agricultural Assistant as per the Bank's advertisement. I passed the written test successfully and was called for an interview by the Bank. After passing the interview I was asked to go through medical test on 29-7-1974. Afterwards I was appointed in the Bank. The appointment was from 1-8-1974 to 31-8-1974. Thereafter, the service period was extended from 3-9-1974 to 2-10-1974 by another order. Thereafter, the service period was again extended from 4-10-1974 to 3-11-1974. The Rashivade Branch of the bank was opened in December, 1973. The post of an Agricultural Assistant was sanctioned from the opening of the branch. Nobody was working as an Agricultural Assistant at that branch till I joined the services there. My duties, as stated in

my appointment orders, were of permanent nature. I am a member of the Bank of India Workers' Organization."

In his further affidavit (Ex. 11), the said workman further stated thus :

"I became the member of the bank of India Workers Organization in July, 1983. I then authorised the said organization to take up the matter with the management. I further requested to Joint Secretary of the Organization to take up the matter with the court. As per my request, the Joint Secretary started the legal proceedings."

In his cross-examination the said workman stated thus :

"I have passed the B.Sc. (Agricultural) Examination. I was given the training by the bank during my temporary period. My attention is now drawn to the reference in question made by the Government. I say that the loss suffered by me is that I was deprived of my seniority. My junior person became senior to me. I suffered no monetary loss. However, I will not get proper increment due to my junior being posted senior to me. I protested in writing about it to the Bank."

11. The said Organizing Secretary of the Bank of India Workers' Organization viz., Shri S. D. Tambe in substance stated in his affiadvit Ex. 13 thus :

"At present I am the Organizing Secretary of the Bank of India Workers' Organization. On 4-2-1990 while I was travelling by the train from Bombay to Nagpur, I lost my bag containing certain documents relating to the said organization. The Joint Secretary of the Bank of India Workers' Organization was duly authorised to raise an Industrial Disputes by appropriate resolution. The Bank in question has signed settlements with our union in cases involving individual disputes or policy matters disputes."

In his cross-examination, the said Organizing Secretary in substance stated thus :

"A decision was taken in the meeting of the Managing Committee of the Bank of India Workers' Organization to espouse the cause for and on behalf of the workman Shri Jadhav and it was recorded in the minutes book. Our organization is also called by the Bank at times for certain discussions on labour problems."

Shri R. M. Savle, the Industrial Relation Officer of the bank in substance stated in his affiadavit (Ex. 15) thus :

"The Bank of India Workers' Organization has no locus standi to espouse the cause for and on behalf of Shri A. M. Jadhav, and he cannot submit the statement of claim on his behalf. The majority of the workmen employed by the bank are the members of the Bank of India Staff Union. This majority union has no dispute with the bank over the matter in question. As such there is no industrial dispute between the bank and the workman as a class which can partake the character of the Industrial Dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947."

In his further affiadvit (Ex. M/16) he stated thus :

"Eventhough one post of an Agricultural Clerk was sanctioned in October 1973 on the basis of potential for agricultural finance at Rashivade Branch, and although the said Rashivade Branch was opened on 29-12-1973, the Bank did not consider it necessary to fill up the said post of agricultural clerk during the initial period."

In his cross-examination the said witness of the bank management in substance stated thus :—

"The Bank of India Workers' Organization is a registered trade union. The duty mentioned in the letters of appointment of the said workman were not of temporary nature. In case the said workman had protested against the terms and conditions of the service, the bank manager would have considered him for appointment on permanent basis, if found just and proper. Only three persons i.e. the Branch Manager, the Cashier and the Sepoy (Peon) were working at the Rashivade Branch in 1974 before the appointment of the said workman Shri Jadhav there."

The Bank's second witness Shri H. J. Kadam, the then Manager of the Rashivade Branch in substance stated in his affidavit (Ex. 18) thus :

"At the material period I was working as a Manager of the Rashivade Branch, under the then Kolhapur Area Office, Kolhapur. The said workman Shri Jadhav was appointed as an Agricultural Clerk with effect from 1-8-1974 to 31-8-1974 purely on temporary basis at the Rasivade Branch of the Bank. After the opening of the branch, I was running the branch with the help of Cashier and a Sepoy. After some period there was an increase in pressure of work of temporary nature at Rashivade Branch, and to cope up with the increase in work, Shri Jadhav was appointed purely on temporary basis. Prior to the appointment of Shri Jadhav, I was doing the work relating to Agriculture finance. Eventhough one post of an Agricultural Clerk was sanctioned in October, 1973 on the basis of Agricultural flanance work at Rashivade Branch, and eventhough the said branch was opened on 29-12-1973, the Bank did not consider it necessary to fill up the said post of an Agricultural Clerk during the initial period. After some period I found that the pressure of work had increased heavily, as there was a need to do a lot of spade work and surveys etc. for assessing potential for agricultural business and to cope up with the same, I needed some assistance. Thereafter, with the permission of the Superior Officer I appointed the workman Shri Jadhav on temporary basis for a period of one month from 1-8-1974 to 31-8-1974. As the said pressure of work did not subside Shri Jadhav was again appointed by me for a further limited period of one month from 3-9-1974 to 2-10-1974. However, as the said pressure of work still continued Shri Jadhav was again reappointed by me from 4-10-1974 to 3-11-1974 purely on temporary basis, by a fresh appointment letter. Thereafter the Higher authorities appointed Shri Jadhav on probation for a period of six months w.e.f. 4-10-1974 by the order dated 24-9-1974 in the vacant post of an Agricultural Clerk at that branch, and thereafter he was confirmed in service on 4-4-1975."

In his cross-examination the said Branch Manager Shri Kadam in substance stated thus :—

"At that time the said new Rashivade Branch was opened, the staff consisted only of I myself, the Cashier-cum-Clerk, and a peon only. It was a rural Branch, and work load was comparatively less then. Except the work of survey, the other duties of the said workman as mentioned in the order of appointment were of permanent nature. It was mentioned in his appointment letter that he would be considered for the permanent post if he qualified himself in the bank's written test and the interview on merits etc."

Ex. 3 is the copy of the letter dated 1-8-1974 appointing the said workman Shri Jadhav as an Agricultural Clerk in the bank service from 1-8-1974 to 31-8-1974. It was mentioned therein that his appointment was purely on temporary basis. The last para of this letter stated that he would be considered for the permanent post in the bank provided he qualified himself in the bank's written test and the subsquent interview on merits and is medically found fit by the Bank's Doctor.

12. ISSUE NOS. 1 AND 2.

According to the Bank Management, the Bank of India Workers' Organization has no locus-standi to espouse the cause

for and on behalf of the said workman Shri Jadhav, and no Industrial Dispute as contemplated under Section 2(k) of the Industrial Disputes Act, existed between the bank and the workman as a class. However, admittedly the Bank of India Workers' Organization, eventhough the minority union, is registered under the Trade Unions Act. As is seen from the evidence of the said workman, and from the evidence of the Organizing Secretary of that organization that the said workman had duly authorised the said organization to espouse the cause for and on his behalf, and that the said organization had passed the necessary resolution in that respect. An Industrial Dispute, as per section 2(k) of the Industrial Disputes Act, means any dispute or difference between the employers and the workmen connected with the terms of employment or the conditions of labour of any person. Thus, as per the provisions of Section 2(k), it is not absolutely essential that the dispute must be between the employer and the majority union of the workmen. A minority union also represents a large number of workmen on their behalf. Further the said minority union is a registered trade union. The Bank Management in question had the discussions with that minority union also. Therefore, I find that the said Bank of India Workers' Organization has the locus standi to espouse the cause for and on behalf of the workman Shri Jadhav, and as such an Industrial Dispute existed between the Bank Management and the workman as a class.

ISSUE NOS. 1 and 2 are found accordingly.

13. ISSUE NO. 3.

The said workman and his organization has his grievance regarding the nature of his appointment made in 1974, and he made the necessary representations in that respect to the bank management in 1983. The said organization made the necessary representations to the bank management in 1984. Therefore, according to the bank management, the demand made for the said workman by his organization about 10 years after the cause of action is not tenable in law. The Bank Management has relied upon the Judgment of the Supreme Court of India, reported in 1975 II LLJ page 98. It was held therein that, "the court should not entertain the stale claims as it creats the administrative difficulties". In that case the seniority list of Additional Commissioners of Income-tax prepared in 1958 was challenged in 1971. The bank management has also relied upon the Judgment of the Supreme Court reported in 1977 AIR page 282. It was held therein that, Article 137 of the Limitation Act, 1963, applies to any application under any Act. In that case, the application was filed under the Telegraphs Act, 1885. However, the Hon'ble High Court of Bombay, Nagpur Bench, has recently held in a case that no limitation period has been fixed for filing an application under Section 33C(2) of the Industrial Disputes Act, and hence the idea of the claim being stale cannot be imported. Therefore as no limitation has been fixed in the Industrial Disputes Act for seeking the necessary grievance, the grievance made by the workman in question and his organization about 10 years after the cause of action to his management cannot be held as unsustainable or stale. Therefore the demand in question is quite tenable in law.

ISSUE NO. 3 is found in the affirmative.

14. ISSUE NO. 4.

Issue No. 4 relates to the dates of the appointment orders of the said workman. As can be seen from the appointment letters (Exs. 22, 23, and 24) issued by the bank management, the workman was firstly appointed on temporary basis from 1-8-1974 to 31-8-1974, then again from 3-9-1974 to 2-11-1974, and then from 4-10-1974 to 3-11-1974. By the order dated 24-9-1974, he was appointed on probation w.e.f. 4-10-1974. I therefore, find that the said dates as mentioned in the different orders are the correct dates.

15. ISSUE NO. 5.

According to the bank management, the appointment of the said workman on regular basis from 4-10-1974 is independent of his appointment on temporary basis prior to 4-10-1974, and there is no link between them. However, the said workman was firstly appointed on temporary basis from 1-8-1974 to 31-8-1974 and then from 3-9-1974 to 2-10-1974 and then from 4-10-1974 to 3-11-1974 and was appointed on probation from 4-10-1974 for six months and was confirmed in service on 4-4-1975. He was appointed on probation from 4-10-74 as he was firstly appointed on temporary basis for two months, and as he was appointed on probation for six months, he was later on confirmed in service from 4-4-1975. I, therefore find that all those dates are interconnected and the said appointments are not independent of each other, but are connected with each other.

ISSUE NO. 5 is therefore found accordingly.

16. ISSUE NO. 6.

As can be seen from the evidence of the said two bank management's witnesses, there was the need of a clear vacancy of the post of an Agricultural Clerk on the opening of the new branch of the bank at Rashivade in December 1973 and that the necessary post was already sanctioned by the authority concerned in October 1973. The said workman was being appointed on temporary basis from time to time for three months and thereafter was appointed on probation from 4-10-1974 and was confirmed in service from 4-4-1975. As per para 20.8 of the Bipartite Settlement of 1966 :

> "'A temporary Workman' may also be appointed to fill a permanent vacancy provided that such temporary appointment shall not exceed a period of three months during which the Bank shall make arrangements for filling up the vacancy permanently. if a Temporary Workman who is appointed to fill in a permanent vacancy is eventually selected for filling up the vacancy the period of such temporary employment will be taken into account as part of probationary period."

Therefore the said workman should have been appointed on probation w.e.f. 4-8-1974 and not from 4-10-1974, as per the provisions contained in para 20.8 of the Bipartite Settlement. He was appointed on temporary basis from 3-9-1974 to 2-10-1974, and thereafter there was a break of one day and thereafter he was again appointed on temporary post from 4-10-1974 to 3-11-1974. Therefore eventhough there was a break of one day between the said two periods of temporary appointment, he was appointed on probation from 4-10-1974. As such the said workman could have been and should have been appointed on probation from 4-8-1974 eventhough there was a break of two days between the temporary period of 1-8-1974 to 31-8-1974, and then from 3-9-1974 to 2-10-1974. The said workman should have been deemed to be posted on probation from 4-8-1974. Therefore the action in question of the bank management is not just, proper, and legal.

ISSUE NO. 6 is found in the negative.

17. ISSUE NO. 7.

According to the workman, he has not suffered any monetary loss, but that he has lost his seniority, and he will not get the necessary increments in future. Therefore the bank management must be directed to treat the said workman as posted on probation w.e.f. 4-8-1974 and to give him the necessary consequential benefits.

ISSUE No. 7 is found accordingly.

18. The following award is therefore passed.

AWARD

The action of Zonal Manager, Bank of India, Pune, in not taking into account temporary period of employment from 4-8-1974 to 2-10-1974 as a part of probation period of Shri A. M. Jadhav, Agriculture Clerk in accordance with provisions of para 20.8 of Bipartite Settlement of 19-10-1966 is not just, proper, and legal.

The Bank management is hereby directed to treat the said workman as posted on probation w.e.f. 4-8-1974, and to give him the necessary consequential benefits arising from the said date.

The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 1992

का. आ. 2913.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, यूनाईटिड बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-10-92 को प्राप्त हुआ था।

[संख्या एल-12012/252/85-डी-2(ए)]

वी. के. वेणुगोपालन, डैस्क अधिकारी

New Delhi, the 30th October, 1992

S.O. .—In pursuance of Sertion 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of United Bank of India and their workmen, which was received by the Central Government on 29th October, 1992.

[No. L. 12012|252|85-D.II(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NO. 2, BOMBAY

PRESENT :

Shri P. D. Apshankar, Presiding Officer.

Reference No. CGIT-2/44 of 1986

PARTIES :

Employers in relation to the management of Union Bank of India.

AND

Their workman.

APPEARANCES :

For the Employer—Shri Rajeev Chhabra, Advocate.

For the workman—1. Shri P. T. Trivedi, 2. Shri C. V. Jagdale, Advocates.

INDUSTRY : Banking. STATE : Maharashtra.

Bombay, the 15th October, 1992

AWARD

The Central Government by their order No. L-12012/252/85-D.II(A) dated 7th October, 1986 have referred the following Industrial Dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947.

"Whether the action of the management of Union Bank of India, in terminating the services of Shri Ashok Dhabalaya, ex-collection/Commission agent with effect from 16th February, 1985, is justified ? If not, to what relief the said workman is entitled ?"

2. The case of the said person Shri Ashok Dhabalaya as disclosed from the Statement of Claim (Ex. W/2) filed by him in person in short is thus :—

He was working as a Mini Deposit Agent with the Union Bank of India at Yavatmal. However, he also used to work and do some other incidental work like making the entries of the collection in the ledger book, prepare vouchers, calculating interest of the customer etc. However the Branch Manager of that Bank terminated his services with effect from 16th February, 1985 without giving him one month's notice, or one month's wages in lieu of the notice. As such the Bank Management committed a breach of the provisions contained in Section 25F of the Industrial Disputes Act. Even though he was appointed as an agent, he was compelled to work in the bank like an employee of the bank. After the termination of his appointment, he sent the necessary notice dated 4th March, 1985 to the Bank Management requesting them to reinstate him in service. However, the Bank Management did not reply to that notice. Hence he raised an Industrial Dispute before the Assistant Labour Commissioner (Central) at Chandrapur. However as the conciliation proceedings ended in failure the Central Government made the reference as above. The said person, therefore, lastly prayed that this Tribunal should hold the said action of the Bank Management as unjust and illegal, and should direct them to reinstate him in service with full back wages and the continuity in service.

3. The Manager (Industrial Relations) of the said Bank by his Written Statement (Ex. M/3) opposed the said claim of the said person, and in substance, contended thus :

The said person was not a 'workman' as contemplated under the provisions of the Industrial Disputes Act, and as such, no Industrial Disputes existed between him and the Bank Management. Further, the Central Government have referred the dispute raised by Tiny Deposit Collectors, wherein 48 banks have been made parties to that dispute, before the National Industrial Tribunal, Hyderabad, in Reference No. 14 of 1980. The terms of that reference are :

"Whether the demand of commission agents or as the case may be, Deposit Collectors employed in the banks listed in the annexure, that they are entitled to pay scales, allowances and other service conditions available to regular clerical employees of those banks, is justified. If not, to what relief the workman concerned are entitled ?"

One of the Issues framed by that Tribunal is "Whether Commission agents or Tiny Deposit Collectors are workmen ?" As per Section 10(6) of the Industrial Disputes Act, "in case a reference has been made to a National Tribunal, no Labour Court or Tribunal has jurisdiction to adjudicate upon any matter which is under adjudication before that National Industrial Tribunal". As such the present reference will have to be stayed till the reference before the National Industrial Tribunal has been disposed off.

4. The Bank Management further contended thus :

No relationship of employer and employee or of master and servant existed between the bank and the said person who was appointed as a deposit agent. The said person was appointed as a deposit agent under a specific contract, and as such, he cannot be treated as a workman, and hence the provisions of the Industrial Disputes Act, 1947, are not attracted to the present dispute. The said person was appointed as a Mini Deposit Agent by the bank at Yavatmal Branch under the Agreement dated 27th September, 1976. Clause 7 of that agreement clearly stated that his appointment was purely on contract basis, and he would be governed by the terms and conditions of the contrart mentioned therein, and that none of the provisions of the service rules applicable to the employees of the bank would be applicable to him. Clause 6 of that agreement clearly stated that, "the said agreement would not entitle him to claim uninterrupted agency arrangement, and that it would be terminated by the bank at any time without notice to him". Clause 7 of that agreement further stated that no right or claim whatsoever was conferred upon him for absorption in the bank's service in any cadre. The said person had accepted the said terms and conditions of the agreement, and thereafter he was appointed as a Mini Deposit Agent for the bank. Therefore, as the said person was not appointed as an employee or servant or a workman of the bank, he is not entitled to reinstatement in service, and the action of the bank in terminating

his appointment as an agent is quite just, legal, and proper. The Bank Management therefore lastly prayed for the rejection of the prayer of the said putes Act ?

5. The Issues framed at Ex. 4 are :

(1) Whether the workman proves that the termination of his services w.e.f. 16th February, 1985 by the Bank is illegal, and was in contravention of the provisions contained in Sec. 25F of the Industrial Disputes Act ?

(2) Whether the Bank proves that Shri Ashok Dhabalaya, Commission/Deposit Agent, was not its employee and a 'workman' ?

(3) Whether the present reference is required to be stayed under Section 10(6) of the Industrial Disputes Act, in view of the pendency of a similar reference before the National Tribunal ?

(4) Whether the said person is entitled to reinstatement in service in the said Bank ?

(5) To what relief, if any, is he entitled ?

(6) What Award ?

6. My findings on the said Issues are :

(1) No.

(2) Yes.

(3) Issue does not survive.

(4) No.

(5) Nil.

(6) Award as per below.

REASONS

7. ISSUE NO. 3.—According to the Bank Management, a similar reference concerning the Deposit Agents is pending before the National Industrial Tribunal, and as such the present reference must be stayed till the disposal of that reference. However, it is seen from the copy of the reference (Ex. 3A) that the said reference has been made to the Industrial Tribunal at Hyderabad which is constituted under Section 7A of the Industrial Disputes Act. The National Industrial Tribunal is constituted under Section 7B of the Industrial Tribunal Act. Therefore, as the said other reference has been made to the Central Government Industrial Tribunal, Hyderabad, and not to the National Industrial Tribunal, the question of staying the present reference does not survive, and as such issue No. 3 does not survive. Hence the present reference will have to be proceeded with and can proceed with in law.

Issue No. 3 is therefore found accordingly.

8. ISSUE NOS. 1, 2, 4 & 5.—The said person Shri A. V. Dhabalaya filed his affidavit Ex. W/5 in support of his case, and he was cross-examined on behalf of the Bank Management. The Bank Management filed the affidavit of Shri T. M. Nikam, the Manager of the Union Bank of India, in support of their case, and he was cross-examined on behalf of the said person. The said person stated and admitted in his cross-examination thus :

> "I was getting the commission from the bank on the basis of the amount I had collected. No fixed salary was to be paid to me. I was not doing any other work when I was doing the said work. I was not forced to work. I collected and deposited about Rupees four lakhs in the bank. I was not required to sign the attendance register. I was not supposed to work during any fixed hours in the bank. No amount towards Provident Fund or gratuity was deducted from my commission by the bank".

It is thus quite clear from the different statements made by the said person that he was not working as an employee or servant or workman of that bank, but that he was working purely as a Deposit Agent. And as such there was no question of giving him any notice by the bank prior to the termination of his appointment, and that the provisions of the Industrial Disputes Act will not apply to his case.

9. The documentary evidence on record also clearly and strongly supports the case of the bank management. Ex. 9 is a copy of the appointment letter dated 27th September, 1976 appointing the said person as an authorised agent for the collection of Mini Deposit by the bank. This letter clearly stated that the said person Shri Dhabalaya was appointed as the bank's authorised agent for collection of Mini Deposits from the bank's customers. The other material conditions of his appointment mentioned in the said letter of appointment are thus :

(i) His appointment will be purely on contract basis. He will be governed by the terms and conditions of the contract and none of the provisions of the service rules applicable to the workmen/the officers staff of the Bank shall apply to him.

(ii) He will be paid a commission of 2-1/2 per cent of the total Mini Deposit Collections by the bank.

(iii) He shall not be entitled to any time-scale of pay with increments or to receive any emoluments or perquisites in addition to the monthly commission stated above. He will not be entitled to be a member of the Union Bank of India Employees' Provident Fund, nor shall he be entitled to payment of Gratuity or any other retirement benefit.

(iv) that contract will not entitle him to claim uninterrupted agency arrangement, and it can be terminated by the bank at any time without notice to him.

(v) This appointment is offered on the express understanding that no right or claim whatsoever will be or is made to be conferred on him for absorption in the Bank's service in any cadre.

(vi) In case the above terms and conditions are acceptable to him, he will have to execute an agreement as per the draft enclosed therein.

10. Therefore, it is quite clear from the different terms and conditions of his appointment as the commission agent mentioned in the said letter that the said person was appointed as a Mini Deposit Agent for the Yavatmal Branch of the bank, and he was not appointed as an employee or servant or the workman of that bank.

11. Ex. M/10 is a copy of the Specimen form of the agreement to be executed by an agent and by the bank management regarding the appointment of the person as an agent. As per the terms and conditions of that agreement, the Principal authority, i.e. the Bank appoints the particular person as an agent for the purpose of collection of mini deposit, for a particular period. This agreement further states that the bank shall pay to the agent a monthly commission at the rate of 2½% for the collection of the deposits. This agreement further stated that the agreement in question can be terminated by the principal authority, i.e. the bank at any time without giving notice to the agent. Thus as per the agreement executed between the said person and the bank, the said person was appointed by the bank as a deposit agent and not as an employee of the bank. By the letter dated 9th February, 1985 (Ex. 2A), the Bank Management terminated the agency of the said person w.e.f. 16th February, 1985. This letter also stated that the bank had closed the deposit scheme w.e.f. 16th February, 1985, and as such the bank is terminating his appointment as a commission Agent.

12. It is therefore quite clear from the abovesaid documentary evidence as well as from the different statements and admissions made by the said person that no relationship of master and servant or of employer and employee, or of employer and workman existed between the said bank and the said person. As such he was not a workman as contemplated under the provisions of the Industrial Disputes Act, and therefore there was no need to comply with the provisions regarding the retrenchment of a workman. Therefore, the action of the Bank Management in terminating his appointment as a Deposit Agent was quite just, legal and proper. Therefore the said person is not entitled to reinstatement in service.

Issues Nos. 1, 2, 4 and 5 are therefore found accordingly.

13. Even though the said person is not entitled under law to reinstatement in service, it is only suggested that if possible and if permissible under rules, the Bank management may try to appointment the said person as a fresh employee on any suitable post, if possible.

14. In the result, the following Award is passed :

AWARD

The action of the management of the Union Bank of India, in terminating the services of Shri Ashok Dhabalaya, ex-collection/commission agent with effect from 16th February, 1985 is just, legal and proper.

The parties to bear their own costs of this reference.

Sd/-

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 30 अक्तूबर 1992

का.आ. 2914.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. बी. सी. सी. एस. की लोदना कोक प्लांट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-10-92 को प्राप्त हुआ था।

[संख्या एल-20012/59/89-आई आर (कोल-I)]

वी. के. वेणुगोपालन, डैस्क अधिकारी

New Delhi, the 30th October, 1992

S.O. 2914.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Lodna Coke Plant of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 26-10-92.

[No. L-20012/59/89-IR (Coal-I)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Sec. 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 198 of 1989

PARTIES :

Employers in relation to the management of Lodna Coke Plant of M/s. B.C.C. Ltd.

AND

Their workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers—Shri B. Joshi, Advocate.

For the Workmen—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

STATE : Bihar. INDUSTRY : Coke.

Dated. the 15th October, 1992

AWARD

By Order No. L-20012(59)/89-I.R. (Coal-I), dated the 7th December, 1989, the Central Government in the Ministry of Labour, has in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the demand of the Bihar Colliery Kamgar Union to accept the age of Shri Sanichad Mahato, Tyndal Zamadar of Lodna Coke Plant, BCCL, P.O. Lodna Dist. Dhanbad as recorded at the time of erstwhile management i.e. 1-3-1944 or to refer him to the Medical Board for assessment of his age is justified? If so, to what relief the workman is entitled ?"

2. The case of the concerned workman, as disclosed in the written statement submitted on his behalf by the sponsoring union, Bihar Colliery Kamgar Union, details apart, is as follows :

The concerned workman had been working as permanent Tyndal Zamadar at Lodna Coke Plant since long with unblemished record of service. At the time of his appointment, his name, age was recorded in Form 'B' Register maintained by the erstwhile owner. In the Form 'B' Register his date of birth was recorded as 1-3-1944. After nationalisation of the collieries, the management of M/s. B.C.C. Ltd. interpolated the Form 'B' Register and tried to change the date of birth of the concerned workman. On the basis of interpolated record the management illegally and arbitrarily superannuated him from service with effect from 1-7-86. He and his union immediately protested against the illegal and arbitrary act of superannuation by the management and pointed out that Somar Mahato, his elder brother was still working at Bagdigi Colliery as Trammer and his date of birth was recorded as 55 years as on 1-7-86. However, the anti-labour management did not pay any heed to his request and prayer nor did it pay any heed to the representation of the union. The union raised the issue with the management during the discussion on 25-7-87 and a note of discussion was also drawn up wherein and whereby it was agreed upon to refer the concerned workman to Medical Board for assessment of his age. The management did not comply with its own commitment and assurance given to the union. Seeing no other alternative the union raised an industrial dispute before the Asstt. Labour Commissioner (C), Dhanbad, with the hope for an amicable settlement. But the conciliation proceeding ended in a failure due to recalcitrat attitude of the management. Anyway, the Ministry of Labour, appreciating the legal position, referred the dispute for adjudication. The demand of the union to accept the date of birth of the concerned workman as 1-3-44 or to refer him to the Medical Board is legal and justified. The action of the management in superannuating him from service with effect from 1-7-86 is unjustified, illegal and arbitrary.

3. The case of the management of Lodna Coke Plant as appearing in the written statement-cum-rejoinder, details apart, is as follows :

The present deference is not legally maintainable. The concerned workman was appointed as Mazdoor in Lodna Coke Plant in the year 1958. In the course of time he was promoted as Tyndal Zamadar and was holding the said post at the time of his superannuation on 1-7-86. As per entry in Form 'B' Register he was born in 1926. As he could not declare his date of birth and could not produce any proof relating to his date of birth and could only declare his year of birth as 1926, the entry in Form 'B' indicates 1926 against his date of birth/age column. As per procedure of the management, 1-7-26 was considered to be his date of birth for the purpose of determining the date of birth. He was superannuated with effect from 1-7-86. Form 'B' register is maintained as required by Sec. 48 of the Mines Act on the prescribed form under the Mines Rules, 1955. It is incumbent duty of the owner of the mine to maintain Form 'B' register up-to-date. Whenever there is

change of the ownership or management or at interval of 15 to 20 years, the new Form 'B' Register is introduced and brought upto-date with reference to old Form 'B' register. The workers are called upon to verify the entries made therein and to put their signatures/L.T.Is. against their respective names. The old Form 'B' Register is required to be preserved for one year only as per provisions of Mines Rules, 1955. After one year the Form 'B' Register becomes final and all entries are presumed to be correct. The date of birth entered in Form 'B' Register is conclusive proof of age for the purpose of superannuation as per J.B.C.C.I.'s decision and as well as under the provisions of Standing Orders whatever may be actual date of birth of a workman. The age of a workman may be assessed by the Apex Medical Board if there is variation between the date of birth entered in different documents of the management. There is no variance between the date of birth/age of the concerned workman as recorded in different documents of the management. The age recorded in Form 'B' Register became conclusive for the purpose of superannuation of the concerned workman. In the circumstances, the management has submitted that the concerned workman is not entitled to get any relief in the present industrial dispute.

4. In rejoinder to the written statement of the management, the union has reiterated that the concerned workman was superannuated from service illegally and arbitrarily with effect from 1-7-86. The union has submitted that it is false to allege that as per Form 'B' Register the year of birth of the concerned workman was recorded as 1926. The date of birth of the concerned workman was 1-3-44. The union has further submitted that Form 'B' Register is a continuous register and the management has no authority to change Form 'B' Register in each year.

5. In rejoinder to the written statement of the union, the management has asserted that the age of the concerned workman was recorded as 1926 in Form 'B' Register. The management has denied that it has interpolated Form 'B' Register and tried to change the date of birth of the concerned workman. The management has nothing to do in the matter whether Somar Mahato is elder brother or has managed to get lower age recorded in Form 'B' Register. In the absence of any proof of age, the declared age of a workman used to be recorded in Form 'B' Register.

6. The union has not laid any evidence either oral or documentary in support of its demand.

On the other hand, the management has produced an affidavit affirmed by the concerned workman before the Notary Public, Dhanbad, on 28-9-92.

7. Admittedly, Shanichar Mahato, the concerned workman, was appointed as Mazdoor in Lodna Coke Plant in 1958. In course of time he was promoted to the post of Tyndal Zamadar and retired from service as such on 1-7-86.

It has been alleged by the sponsoring union that the date of birth of the concerned workman was recorded as 1-3-44 in Form 'B' Register maintained by the erstwhile owner. The union could not produce any document in support of this contention. On the other hand, the management has asserted that on the declaration of the concerned workman his year of birth was recorded as 1926 in Form 'B' Register. The union has alleged that the management has interpolated the Form 'B' Register. There is no vestige of evidence to indicate this contention.

8. The union has asserted that Somar Mahato, elder brother of the concerned workman is still working as Trammer in M/s. B.C.C. Ltd. and his age has been recorded as 55 years as on 1986. This Somar Mahato has not been examined by the union nor did the union make any attempt to produce Form 'B' Register in respect of Somar Mahato. Then again the union has asserted that there was a discussion between the management and the union over the issue of superannuation of the concerned workman from service with effect from 1-7-86 and that a note of discussion was drawn up and thereby it was agreed to refer the concerned workman to Medical Board for determination of his age. The union has not produced this record note of discussion nor did it call for the record note of discussion from the management.

9. The management has strongly relied on the affidavit sworn by the concerned workman before the Notary Public at Dhanbad. In this affidavit he has stated that he was working at Lodna Coke Plant from 1958 and was superannuated with effect from 1-7-1986 and that at the time of superannuation he was working as Tyndal Zamadar. He has affirmed that he declared his year of birth as 1926 at the time of filling up the Form 'B' Register and this was recorded in Form 'B' Register correctly. By Affidavit he has accepted his superanuation with effect from 1-7-1986. It has not been alleged by the union that the concerned workman was compelled to affirm his affidavit under coersion or by blandishment. That being so the statement of the concerned workman as appearing in the affidavit shall be accepted as correct. This being the position, the union could not prop up its demand that the concerned workman was superannuated from service arbitrarily or illegally.

10. Accordingly, the following award is rendered—the demand of the Jhar Colliery Kamgar Union to accept the age of Sanichar Mahato, Tyndal Zamadar of Lodna Coke Plant of M/s. B.C.C. Ltd., PO. Lodna Dist Dhanbad, as recorded at the time of erstwhile management ie 1-3-1944 or to reformed the concerned workman to Medical Board for assessment of his age is not justified.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 1992

का.आ. 2915.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. बी. सी. सी. एल. का भीरा एरिया न. XI के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 26-10-92 को प्राप्त हुआ था।

[संख्या एल-24012/120/87-डी (4) (बी)]

वी. के. वेणुगोपालन, डैस्क अधिकारी

New Delhi, the 30th October, 1992

S.O. 2915.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Centarl Government Industrial Tribunal, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the Mgt. of Bhoura Area No. XI of M|s. B. CCL and their workmen, which was received by the Central Government on 26-10-92.

[No. L-24012|120|87--D.IV(B)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 36 of 1988

PARTIES :

Employers in relation to the Management of Bhowra Area No. XI of M|s. B.C.C. Ltd.

And

Their Workmen

PRESENT :

Shri S. K. Mitra, Presiding Officer

APPEARANCES :

For the Employers : Shri G. Prasad, Advocate.

For the Workmen : Shri P. B. Choudhary, Authorised Representative.

STATE : Bihar. INDUSTRY : Coal.

Dated, the 13th October, 1992

AWARD

By Order No. L-24012(120)|87-D.IV(B), dated the 10th February, 1988, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the demand of the Rashtriya Colliery Mazdoor Sangh (INTUC), D. G. Plant Branch, Jealgora, P.O. Patherdih, Dist. Dhanbad to promote S|Shri Broj Kishore Prasad and Jagdish Prasad in Technical| Supervisory Grade-D instead of Category-V by the Management of Bhowra Area-XI of M|s. Bharat Coking Coal Ltd., is justified ? If so, to what relief the workmen concerned are entitled ?"

2. The case of the concerned workmen, as disclosed in the written statement submitted on their behalf by the sponsoring union, Rashtriya Colliery Mazdoor Sangh, D.G. Plant, Jealgora, details apart, is as follows :

The D. G. Plant at Jealgora is totally a mechanised and self power generation Project. It is a highest and biggest power producing Project in M|s. B.C.C. Ltd. apart from other small units in different places. The capacity of power generating in electro-mechanical system in this Project is 9.9 Magha Volt AMPS and the strength of the total work force was 83|94 including skilled, semi-skilled and Technical staff and the present strength has been reduced to 43. The D.G. Project at Jealgora is under direct control and part and parcel of the establishment of the Superintending Engineer headed by the General Manager of Bhowra Area Group of collieries. The concerned workmen amongst others have been working in the plant. They were appointed by Bararee Colliery on 1-5-1972 and placed in Category-I. They are governed by the Certified Standing Orders of the colliery while they were in Bararee colliery having experience in diesel trade, the D.G. Plant was growing under direct control of the Director (Technical) at Headquarters of M|S. B.C.C. Ltd. The management was in search of technical hands and made enquiry from time to time from the collieries about personnels having experience in diesel trade and other skilled workers. On the demand of the Engineer, D. G. Plant and on the direction of the Director (technical) the concerned workmen from Bararee Colliery, two workmen from Bhulanbararee colliery and two from Jealgora colliery, all under the control of Bhowra group of collieries, were selected and sent for operational training to D. G. Plant on deputation from the respective collieries. The Superintendent of Bararee Colliery in reference to Office Order issued by the Manager (Technical), Bhowra Area issued order for release of the concerned workmen with a direction to them to join D.G. Plant on deputation by letter dated 25|26-7-78 and both of them joined D. G. Plant on deputation for trade training on 26-7-78. After their deputation to D. G. Plant from Bararee Colliery their services remained with Bararee Colliery and as such they were paid by the Bararee Colliery upto March, 1982. Thereafter they were paid by D. G. Plant and Office Order was issued in that behalf. The management of Bararee Colliery confirmed permanent releanse of the concerned workmen with existing condition of service of the colliery and transfered them to D. G. Plant by letter dated 2-2-82 and they were officially taken over by the Deputy Chief Engineer (E&M) of the D. G. Plant by his letter dated 31.3|3-4-82. They were selected for the post meant for technical and supervisory Grade 'D' but they were pleaced in Technical and Supervisory Grade 'E' as their trade experience was less on the recommendation of Mr. Gour, the then head of the Personnel Department of the Area. Both of them were selected by higher officials and the General Manager Bhowra Area passed order directing the Agent, Baranee Colliery to change the status of the concerned workmen by placing them in Technical and Supervisory Grade 'E' as Technical and Supervisory staff. The Agent of Bararee Colliery issued order dated 3-3-80 for paivment to the concerned workmen difference of wages of Technical and Supervisory Grade 'E' with effect from 1-1-1980 and this order was implemented. The aforesaid Office Order also envisaged regularisation of the concerned workmen within six months in Technical and Supervisory Grade 'E'. Both of them were placed in Technical and Supervisory Grade 'E' with effect from 1-1-80 and they were regularised in the same grade with effect from August 1980 in the scale of Rs. 460-16-652 by Office Order dated 18-5-1981 and it was also implemented. They alongwith others were directed to appear before the D.P.C. (Departmental Promotion Committee) of the management for interview for upgradation. The interview took place on 25-9-85. The result of the interview discloses that the concerned workman alongwith others were recommended for upgradation from lower gradel category by Office Order dated 25|26-7-85. The list discloses that they were placed illegaly in Cate.-IV as daily-rated|weekly rated workers and as such. They are to be regularised in Category-V. The D.P.C. misconceived the entire matter and the management demoted the concerned workmen from Technical and Supervisory Grade 'E' which is monthly rated to category-wise nomenclature which is daily-rated. This action of the management is illegal and beyond the jurisdiction of the management. By change as aforesaid the management has changed the condition of service without giving the notice of change under Section 9-A of the Industrial Disputes Act. The change also affected the

facilities available or applicable to the concerned workmen as the monthly rated workers and doomed their career. The management also changed their status by placing them as category related workmen. Earlier their wages was fixed at Rs. 30.40 per day of Category-V wages, but later on that was changed to Rs. 31.40 per day. Again their daily wage was changed from Rs. 31.40 to Rs. 31.04. The management also by placing them as category related workmen from monthly rated workmen had changed their service condition and refused their incremental wage. In the circumstances the union has asserted that the concerned workmen are entitled to Technical and Supervisory Grade 'E' with effect from 1-1-80 with seniority and upgradation to Technical and Supervisory Grade 'D' when the result of D.P.C. was disclosed in 1985.

3. The case of the management of Bhowra Area No. XI of M|s. B.C.C. Ltd. as disclosed in the written statement-cum-rejoinder, briefly stated, is as follows :

The concerned workmen, prior to their transfer to D. G. Project at Jealgora, were working at Bararee Colliery as Category-I Mazdoor. In 1978 a Diesel Generating Project was set up at Jealgora by the employer. This was a new type of unit and as the persons of required skill to man the unit were not available in the company, workers from different collieries were deputed|transferred for training and placement in the unit. The concerned workmen of Bararee Colliery were two such persons amongst others who were deputed to D. G. Project for training. They, however, continued to be remained on the roll of Bararee Colliery. They were regularised in Technical and Supervisory Grade 'E' in the scale of Rs. 460-16-652|- which was almost equivalent to Category-IV available to daily-rated workmen. Their regularisation was done in Technical and Supervisory Grade 'E' because there was no standard job description and designation etc. for the technicians of the newly established plant. This was an internal arrangement. In January, 1983 a cadre scheme was framed by the company by which the categorisation and designations of employees in the D. G. Plant were standarised. The cadre scheme also laid down the promotional channel. According to this cadre scheme all the posts of technicians in D. G. Plant were categorised in daily rates i.e. Category-II to Category-IV. In 1985 a D.P.C. was held in D. G. Plant for promoting employees working in different jobs and in different categories. Promotions in different posts were to be given by adopting the standard designations and categories as stipulated in the cadre scheme then in force. While promoting to the post of Operator-cum-Fitter in Category-V, the existing diesel Mechanics including the concerned workmen in Technical and Supervisory Grade 'E' (equivalent in Cat. IV) were treated at par with Category-IV Mechanics and considered for promotion. The above adjustment had to be made because of the fact that after the introduction of the Cadre Scheme no post of Mechanic-cum-Operator in Technical Grade 'D' existed. The management, therefore, could not have promoted these concerned workmen to Technical Grade 'D'. It is worth mentioning that Technical Grade 'D' is equivalent to Category-VI of Wage Board Recommendation. But promotion was to be given to Category-V. Even if their cases were considered for promotion to Technical Grade 'D', this could have created a big disparity between these two workmen and other workers who were performing the same job. On the recommendation of the D.P.C. they were promoted to the post of Operator|Fitter in Category-V. The aforesaid order of promotion was effected and acted upon. The concerned workman also accepted the order and received payment. They cannot now agitate over the issue as the principle of estoppel will be attracted in this case. The concerned workmen have been working as Operator|Mechanics which is essentially a daily-rated job. There is no rule which provides monthly-rated scale for the jobs which the concerned workmen have been performing. In the circumstances, the management has prayed that the reference may be answered in its favour.

4. In rejoinder to the written statement of the management, the union has reiterated the factual position as disclosed in its written statement. The union has further stated that by the nature of the job performed by the concerned workmen and their subsequent regularisation in Technical and Supervisory Grade 'E' they should have been placed in Technical and Supervisory Grade 'D'. It is beyond the scops and power of the management to change the condition of service from the monthly rated wages to daily rated wages and to reduce the facilities and benefits. Technical and Supervisory Grade 'E' cannot be treated as equivalent to Category-IV as the former is meant for monthly rated staff and the latter for daily rated staff. Disparity has been created by the management by its own action. The recommendation of the D.P.C. is perverse and implementation thereof cannot be used as a bar to the claim of the workman.

5. In rejoinder to the written statement of the union, the management has asserted that the concerned workmen are not entitled to be placed in Technical and Supervisory Grade 'D'. By their placement in Technical and Supervisory Grade 'E' no adverse change was made in their status.

6. The union, in order to sustain its demand, has examined two witnesses including one of the concerned workman as WW-1 and the Secretary of the union as WW-2 and laid in evidence a mass of documents which have been marked Exts. W-1 to W-15.

On the other hand, the management could not lead any oral evidence, but laid in evidence two items of documents which have been marked Exts. M-1 to M-2.

7. Admittedly, the concerned workmen, S|Shri Broj Kishore Prasad and Jagdish Prasad, were appointed by the management of Bararee Colliery on 1-5-72 as daily-rated workers in Category-I. The management of M|s. B.C.C. Ltd. set up a diesel generating project at Jealgora in 1978. There is no dispute that persons having required skill to man such unit not being available in the company, workers from different collieries were deputed|transferred for training and placing in this project. The General Manager of Area No. XI by his letter dated 11-7-78 (Ext. W-9) addressed to the Supdt., Jealgora Colliery, Bararee Colliery and the Manager of Bhulanbararee Colliery requested for certain names of two willing workmen from each mine who were healthy, matriculate|intelligent non-matriculate and these workmen were requir-

ed for training in D. G. Set operation. The Supdt. of Bararee Colliery by his letter dated 25-7-78 released the concerned workmen from Bararee Colliery with a direction to report to Bhulanbararee Colliery D. G. Station (Ext. W-12) Despite their joining the D. G. Project they were treated to be on the roll of Bararee Colliery. Subsequently by Office Order dated 2-2-82 issued by the Manager of Bararee Colliery (Ext. W-3) they were released to D. G. Project with effect from 2-2-82 on their existing pay Dy. Chief Engineer (E&M) by Office Order dated 31-3-82| 3-4-82 posted them at D. G. Station at Jealgora and directed them to report for duty to S.E. (E&M), D. G. Stn., Jealgora as Diezel Mechanic (Ext. W-4). Regard being had presumably to the nature of duties performed by them, they were given difference of wages of Technical and Supervisory Grade 'E'—monthly rated with effect from 18-1-80 by Office Order issued by the Agent of Bararee Colliery dated 3-3-1980 (Ext. W-5). Then by another Office Order dated 18-5-1981 (Ext. W-1) issued by the Dy. Personnel Manager, Bhowra Area, both of them were regularised on monthly rated job in Technical and (Supervisory Grade 'E' in the scale of Rs. 460-16-652 with effect from August, 1980.

8. Earlier there was no cadre scheme for the workmen working in D. G. Project. Cadre Scheme for the employees employed in the operation and maintenance job relating to D. G. Station came into being with effect from 31-1-83 (Ext. M-2). It may be mentioned here that at the time when the concerned workmen by Office Order, were paid difference of wages between Technical and Supervisory Grade 'E' and Category-I and subsequently when they were regularised in Technical and Supervisory Grade 'E', the management did not give them any designation. After the cadre scheme came into being a DPC was set up for consideration of promotion of workmen working in D. G. Station and both the concerned workmen were promoted to the post of Operator|Fitter in Category-V from the post of Diesel Mechanic in Category-IV. I have already pointed out that they were not designated as such when they were regularised in service in Technical and Supervisory Grade 'E'.

9. Anyway the workmen placed in Category IV and V are daily rated workmen whereas workmen placed in Technical Grade 'E', 'D', 'B' and 'A' are monthly rated staff. The union has complained that by changing their category from monthly rated staff to daily rated staff a change in the service condition has been effected. Section 9-A of the Industrial Disputes Act envisages that no employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change—without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected: or within twenty-one days of giving such notice. Classification by grade is one of the items included in the Fourth Schedule The management changed the classification as monthly rated staff in Technical and Supervisory Grade 'E' to daily-rated workmen in Category-IV and subsequently Category-V. The management cannot do so without giving the notice as prescribed in Section 9-A of the Industrial Disputes Act and on this score the action of the management can be faulted.

10. The D.P.C. considered their cases for promotion arbitrarily designating them as Diesel Mechanics and placing them in Category-IV and promoted them to Category-V as Operator-cum-Fitter. This decision of the D.P.C. is not at all correct and free from blemish. In the state of things the concerned workmen should have been placed in Technical and Supervison/ Grade 'D' instead of Category-V.

11. That the management had no clarity of thinking and confounded the matter of fixation of pay in Category-V is evidenced from Office Order dated 28|29-5-86 (Ext. W-6), corrigendum dated 14|16-6-86 (Ext. W7) and another corrigendum dated 25|28-8-86 (Ext. W-8). Upon promotion their basic daily wage per day was fixed at Rs. 30.40 per day by Office Order dated 28|29-5-86. Then the daily wage was raised to Rs. 31.40 by corrigendum dated 14|16-6-86 (Ext. W-7). Then another corrigendum was issued on 25-8-87 (Ext. W-8) fixing basic wage to Rs. 31.40 per day.

12. Shri P. B. Choudhary, authorised representative of the concerned workmen, has submitted that the management adopted discriminatory policy towards the concerned workmen in placing them in Category-V while other workmen similarly placed with the concerned workmen were marrily allowed promotion to Technical and Supervisory Grade 'D'. For instance, he has cited example of Sri K. P. Yadav designated as Fitter-Cum-Diesel Engine Driver placed in Category-V was re-categorised in Technical and Supervisory Grade 'D' by Office Order dated 23-12-81 (Ext. W-13). There is no evidence on record that this Office Order has subsequently been modified or changed. WW-1 one of the concerned workmen, has asserted that K. P. Yadav has been placed in Grade 'D' since 1981. This being so, it appears that the management in departure from its cadre scheme has retained at least one workman as monthly rated staff in Technical and Supervisory Gr. 'D' while status of the concerned workman has been changed from monthly rated staff in Technical and Supervisory Gr. 'E' to daily rated staff in Category-IV. This is a patent discriminatory approach which should be eschewed by public sector undertaking like M|s. B.C.C. Ltd. Shri G. Prasad, learned Advocate for the management has contained that if the concerned workmen are allowed to drift away from the cadre scheme this will result in disparity between the workmen and workmen. I am not impressed by this contention of Shri G. Prasad. If the management is so serious about the cadre scheme then it should have changed the services condition by notice as enjoined in the Industrial Disputes Act and thereafter could have effected any change in the service condition without affecting the workmen materially.

13. In any view of the matter, I am satisfied that the action of the management in re-categorising the concerned workmen in Category-IV and subsequently promoting them to Category-V is not justified and the demand of the union in this context for placing the concerned workmen in Technical and Supervisory Grade 'D' instead of Category-V is justified.

14. Accordingly, the following award is rendered—the demand of Rashtriya Colliery Mazdoor Sangh (INTUC), D. G. Plant Branch, Jealgora, P. O. Patherdih, Distt. Dhanbad, to promote S|Sri Broj Kishore Prasad and Jagdish Prasad in Technical|Supervisory Grade-D instead of Category-V by the management of Bhowra Area-XI of M|s. B.C.C.L. is justified.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer

नई दिल्ली, 29 अक्तूबर, 1992

का.आ. 2916.—उत्प्रवास अधिनियम, 1983 (1983 का 31) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये, केन्द्रीय सरकार श्री एच. सी. गुप्ता, अवर सचिव को दिनांक 29-9-1992 (अपराह्न) से अगला आदेश जारी होने तक उत्प्रवास संरक्षी-1, बम्बई के रूप में नियुक्त करती है।

[सं. ए-22012/1/92—उत्प्रवास]

आर के. गुप्ता, अवर सचिव

New Delhi, the 29th October, 1992

S.O. 2916.—In exercise of the powers conferred by Section 3, Sub-section (1) of the Emigration Act, 1983 (31 of 1983), the Central Government hereby appoints Shri H. C. Gupta, Under Secretary as Protector of Emigrants-I, Bombay with effect from 29-9-92 (AN) till further orders.

[No. A-22012|1|92-Emig]

R. K. GUPTA, Under Secy.

नई दिल्ली, 28 अक्तूबर, 1992

का.आ. 2917.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उक्त अधिनियम की धारा 33 (क) के अंतर्गत ए.एन. जैड ग्रिंडलेज बैंक पी एल सी के प्रबंधन के विरुद्ध श्री एच. के. थिंगलाय्या तथा 42 अन्य द्वारा दायर एक प्रार्थना पत्र के संबंध में अनुबंध में निर्दिष्ट, मध्यस्थ के पंचाट को प्रकाशित करती है, जो कि केन्द्रीय सरकार को 26-10-92 को प्राप्त हुआ था।

[सं. एल-12011/44/90-आई आर (बी III)]

एस. के० जैन, डैस्क अधिकारी

New Delhi, the 28th October, 1992

S.O. 2917.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the ARBITRATOR, as shown in the Annexure, in respect of a complaint U|s. 33 A of the said Act filed by Shri H. K. Thingalayya and 42 others against the management of ANZ Grindlays Bank plc, which was received by the Central Government on 26-10-1992.

[F. No. L-12011|44|90-IR(B.III)]

S. K. JAIN, Desk Officer.

ANNEXURE

BEFORE SHRI H. G. BHAVE JT. CHIEF LABOUR COMMISSIONER(C) RETD.

AND

ARBITRATOR

NAGPUR

Complaint No. 1 of 1992

(Arising out of Reference No. ARBN No. 1 of 1992)

PARTIES :

Shri H. K. Thingalayya and 42 others—Complainants.

Versus

ANZ Grindlays Bank Plc, Bombay. —Opposite Party

PRESENT :

H. G. BHAVE, ARBITRATOR

APPEARANCES :

For the Complainant:: Shri P. N. Subramanyan

Authorised Representative.

For the Opposite Party : 1. Shri C. Krishnamurthi Country Manager Employee Relations.

2. Shri P. S. Borkar Manager Area Administration Bombay.

INDUSTRY : Banking STATE : Maharashtra

Nagpur, dated the 22nd October, 1992

AWARD

INTRODUCTORY :

An industrial dispute between the employers in relation to the management of ANZ Grindlays Bank Plc and their workmen represented by AIGBE Federation and AIGBE Association over the issues with regard to upward revision of Pension and allied matters of employees and for enhancing the quantum of Canteen Subsidy has been referred to me for Arbitration under Section 10-A of the Industrial Disputes Act, 1947 vide agreement dated 20th February, 1992. The Government of India, in the Ministry of Labour vide their order dated 6th March, 1992 in pursuance of Sub-Section (3) of Section 10-A of the said Act have published the said agreement in the Gazette of India, the proceedings in respect of which are pending before me.

2. This Composite Complaint by 4 Sub-Staff of Mint Road branch, 15 of D. N. Road Branch and 24 employed in the M. G. Road branch of the ANZ Grindlays Bank Plc, Bombay has been filed U|s 33-A of the Act against the Bank, as they were concerned in the disputes pending in arbitration proceedings. The complaint was filed on 12-8-1992 in person during my Camp at Bombay. The employers filed their reply on 22-8-1992.

3. The complainants and the Opposite Party Bank were issued notices on 5th September, 1992 directing them to be present in the hearing fixed for 15-9-1992 at Bombay. Both the parties attended. On behalf of complainants four documents were filed, marked W1 to W4. The complainants led evidence by producing

Shri H. K. Thingalayya (S. No. 1 of the complaint) and it was agreed by both the parties to treat his evidence as a common evidence to avoid repetitive depositions and to save time.

COMPLAINT—ITS GIST :

4. The Complainant's allegation is that during the pendency of the arbitration proceedings,

24 Complainants w.e.f. 31-7-1992

4. Complainants w.e.f. 5-8-1992

and 15 Complainants w.e.f. 6-8-1992 were prevented from marking the Attendance Register, not allotted any work and notified in writing that wages will not be paid to them. The Complainants further allege that the Bank has no right or authority under the terms of Service or terms of Contract to resort to preventing the complainants from attending the office and denying them the wages. By their acts, the Bank, has violated the terms of service and Bank's conduct is in violation of Section 33 of the Industrial Disputes Act, 1947. In para 6 of the complaint, they submitted that the Bank has malafide and vexatiously resorted to the said illegal actions on the plea that the complainants have not tucked into the pant the bush shirts i.e. the uniform supplied to them. They for over 30 years, continuously by usage and practice, have been wearing the bush-coat/bush shirt without tucking the same inside the pant. They further submitted that there are no laid down rules or terms of service with regard to wearing of bush shirts. The unjust and illegal action of the Bank is an infringement of Section 33 hence the Complainants prayed that the Arbirator may hold the Bank's action as violation of Section 33 and award wages for the period the Complainants have been prevented from performing their normal duties.

OPPOSITE PARTY BANK'S REPLY :

5. The Bank by its written reply statement dated 22nd August, 1992 have at the outset, asserted that the application U/S 33-A of the Industrial Disputes Act, 1947 does not arise out of the pending arbitration proceedings, as alleged. The said Section provides for special provision for adjudication as to whether the Conditions of Service etc. of employees are changed during the pendency of the proceedings U/S 33 of the Act. The Bank has not, in regard to any matter connected with the Industrial Dispute, altered the service conditions to the prejudice of the workmen. Various allegations made in the complaint, says the reply expressly show that these have no connection or relevance either with pension dispute or with canteen subsidy. On this ground alone the complaint deserves dismissal. Further, the Bank submitted that, it has not made any changes in the service conditions which will prejudicially affect the complainants interest as alleged. Explaining about the uniform issue, the Bank expressed in its written reply that it is a part and parcel of the contract of employment of substaff to wear the uniforms provided by the Bank during the duty hours, in an appropriate manner. Drawing attention to the conciliation settlement dated 6-4-1990 (copy filed with Bank's reply), it is stated that the Bank has been providing uniforms to the sub staff. According to it in the year, 1992, the substaff has been given full sleepe shirts with "U" cut. The employees are duty bound to wear the uniform in the manner expected or prescribed by the Bank's management. Some of the sub staff refused to comply with their part of the contract of employment to present themselves for duty properly attired, hence the reason for asking the sub staff members not to report for duty without properly wearing the uniform provided to them by the Bank. The Opposite Party Bank hence prayed that it may be held that the complaint U/S 33 A is not maintainable and the Bank's action being legal it is justified in not paying wages to the complainants.

PLEADINGS ON BEHALF OF COMPLAINANTS:

6. At the hearing on 15th and 16th September, 1992 at Bombay, Shri Subramanyan, the General Secretary of the A.I.G.B.E. Federation and duly authorised representative of the 43 complainants, reiterated the complainant's complaint as filed before me on 12-08-1992. While arguing their case at length, he first explained how they are interested in and concerned with the industrial dispute pending before the Arbitrator. The complainants are members of Grindlays Bank Employees Union, Bombay which is an affiliated Unit of the A.I.G.B.E. Federation and this Federation is a party to the Arbitration Agreement dated 20-02-1992 which was released for publication by Government of India under Sub Section (3) of Section 10-A of the Industrial Disputes Act, 1947 and this reference is over two issues relating to revision of pension and allied matters and enhancing the quantum of Canteen Subsidy. The expression "workmen concerned in such dispute" occuring in Section 33(1)(a) and Section 33(2) of the Act includes not merely such workmen as are directly or immediately concerned with the dispute, but also those on whose behalf the dispute is raised as well as those who, when the award is made, will be bound by it. In support of his contention Shri Subramanyan, the learned Spokesman for the complainants, relied upon the following cases :—

1. Newtone Studios Ltd. V. Ethirajulu TR 1958 I LLJ 63 (Madras).

2. Hindustan Copper Ltd. Vs. Industrial Tribunal Jaipur 1979 L I C 172, and

3. New India Motors (P) Ltd. New Delhi V K. T. Morris 1960 I LLJ 551 S.C.

He explained how the complainants are concerned with the earlier dispute raised by the Federation and pending before the Arbitrator for determination. All those who sponsor the dispute are concerned in the dispute. Hence, the complainants satisfy the posttion of "concerned in the dispute".

6.1 Shri Subramanyan agreed that an industrial dispute begets unrest and suspicion between the two parties to the dispute. Explaining the purpose of Section 33 he said that it is precisely to avoid aggravation of mutual distrust, to set at rest any fears just or unjust on the part of the workmen or retaliation by the employer for having raised a dispute. The Section seeks to

promote a settlement of the dispute in as peaceful an atmosphere as possible. Section 33 ensures the realisation of these objectives by inserting that the status quo in respect of conditions of service and employment obtaining during the period preceding the occurrence of an industrial dispute shall not be disturbed while the Industrial Dispute is pending before any authority enumerated in Section 33. The conditions of service contemplated under Section 33(1)(a) relate to basic conditions of service viz. Salary, increment, leave and any alteration is not permisisble and in support case law as reported in 1954 I LLJ 45 L.A.T. was quoted. Another decision relied upon is one reported in 1979 LIC 966 CAL Navakrisha Chakraworthy V Calcutta State Tpt. Corpn.

6.2 Meeting the written contention of the Bank in its reply that what is being alleged by the workmen is not connected with the subject matter of the pending dispute before the Arbitrator hence no application or complaint can lie in the matter U|S 33-A, Shri Subramanyan asserted that Industrial Dispute is pending, workmen are concerned, alterations of conditions have taken place hence the jurisdiction of the Arbitrator is non-questionable. He has the jurisdiction to deal with the matter. Stating further, it was pointed out that alteration in the service conditions may be connected with the Industrial Dispute or to any other matter not connected with the dispute. Alteration comes out of certain action by employer. The workmen reported for work, they were refused work and that amounts to illegal dismissal. Referred case was Tulsidas Pal Vs 2nd LC WB 1971 I LLJ 526. If that be so, the complainants fall in Section 33(1) and without permission such an action should not have been taken. It violates Section 33. At the same time he expressed that workmen concerned could not tag in direct line hence they have taken a general line. In any case, Section 33 comes very much in picture.

6.3 Management's action in driving out the workers who had reported for work is absolutely not bonafide. They have no right at all under any Law|Award| Settlement, to ask the workers to go home and deny work to them. Bank's action is very serious alteration, a major ation of keeping workers out of work for almost two months. Complainants have offered for work, work has been denied, thus contract has been broken by employers and not the workmen. The Bank can not make any deduction in wages. Wages denied must be paid. High Courts have held that withholding work is wrong, no wages can be deducted for it, on whimsical grounds. Work so also wages can not be denied. All these things have happened illegally when there is no right to employers. Referring to Bipartite settlements, it was pointed out that at the most not wearing uniform may be a minor misconduct. Method of wearing uniform can be a dispute. Even without uniform if a workman comes for work, the employer has no right to drive him away and deny wages. When a workman has come in uniform, still no work and no wages is nothing but excessive, vindictive, unfair labour practice and an act of victimisation on the part of the management.

6.4 Pleading further after arguments of management were over, Shri Subramanyan said that all the submissions of the Bank are misconceived. Arguments relating to Section 9-A of the Bank are "totally irrelevant".

The Fourth Schedula to the Industrial Disputes Act, 1947 enlists the conditions of service for change of which notice by employer is a must U|S 9-A of the Act. First matter specified in the Schedule is "Wages-period and mode". Non-payment becomes a dispute, as to be adjudicated on merits. Shri Subramanyan maintained that jurisdiction under 33-A is identical to the reference under Section 10. Section 33-A confers distinct benefits on the workman and gives some additional power and jurisdiction to the authorities and enjoins the tribunal etc. to decide the complaint 'as if it were a dispute referred to or pending before it'.

6.5 Item 8 of the Fourth Schedule is about Shri 'Change in Usage'. The complainant No. 1 Thingalaiya had deposed that all along he has been keeping his shirt out|over the pant. This 'usage' has been affected by forcing him and other complainants to tuck the shift in. There is no rule, no law to force the employee to wear uniform in a particular manner. The Union has not been taken into confidence before the management wanted to require the workmen to tuch in the shirts in the pant. So also Union has right to tell workmen "not to listen to employers point". If no settlement, then the implied service condition is of no avail. Existing settlement does not make mention of tucking in shirts. What is not written in the settlement cannot be insisted upon. Bank cannot alter or effect change in Usage. In any case notice U|S 9-A was a must, as not given, alteration in service condition is illegal. The complainants have a grouse against the alteration that has taken place. The change has brought about an adverse change in condition. Thus, the complaint attracts both, Section 33(1) as well as Section 33(2) of the Act.

6.6 Commenting on the management's reference to suit No. 5531 of 1992 in the Bombay City Civil Court at Bombay and its directions dated 27-8-1992 on the members of the GBE. Union to comply with the reciprocal part in carrying out the instructions contained in Bank's letters dated 1-8-92 and 3-8-92 (about tucking in of shirts-prescribed uniforms in correct manner), Shri Subramanyan expresed unhappiness over the approach of the management to rush into the Civil Court in industrial relations matters, knowing fully well that the Supreme Court has examined in a number of cases whether the Civil Courts can enforce a contract of personal service and had held that a contract of personal service cannot ordinarily be specifically enforced and a Court would not give a declaration on it. The Federation which is one of the defendents in the said suit, is taking steps to get the Ad-interim injunction dated 27-8-92 vacated, informed Shri Subramanyan.

BANKS' PLEADINGS :

7. The spokesman of the Opposite Party Bank Shri Krishnamurthi, before elaborating his case in pleadings on 16th September, 1992, drew attention to Bank's reply statement dated 22-8-1992 and reiterating their written contentions strongly resisted the

workmens' complaint U|S 33-A of the Act. According to him the incontrovertible facts in this case are;

(1) the pendency of proceedings before the Arbitrator in respect of an industrial dispute relating to upward revision of Pension and enhancing the quantum of Canteen Subsidy;

(2) the conciliation settlement dated 6th April, 1990 reached before the Deputy Chief Labour Commissioner (Central), New Delhi on the uniforms to subordinate staff;

(3) supply, of uniforms during the year, 1990, 1991 and 1992 as per the settlement;

(4) uniforms given to all subordinate staff for 1992 Out of them only 43 have complained not on the quantum, colour, pattern but only on directions on the expected manner of wearing the supplied full sleeve shirts with 'U' cut.

(5) Issuance of identical letters by the Bank on 1st, 3rd, 8th August, 1992 to Mr. J. L. Chavan and Mr. S. S. Shriyan both of M. G. Road Branch and similar letters served on Mr. N. C. Parmar of D. N. Road Branch on 6th, 7th and 8th August, 1992 and to Mr. H. K. Thingalayya of Mint Road Branch on 5th, 6th and 7th August, 1992. These documents filed on behalf of the complainants themselves are marked W1 to W4. While first letters give directions for tucking shirts, 2nd letters ask the employees to obey orders to tuck in shirts and third letter intimates that for not complying with orders| directions no salary had been earned by them.

7.1 The management pleaded that the complaint u|s 33-A was not maintainable, in as much as they had not altered any condition of service applicable to the workmen. much less any condition of service in regard to any of the two matters connected with Industrial Dispute in reference No. 1|92 pending in Arbitration.

7.2 Reacting sharply to the theory of dismissal (the complainants' spokesman in his pleadings had observed "not giving work to the complainants amounts to illegal dismissal") the Bank observed that this being an afterthought, only figured in the arguments and no mention of it, even oblique, was made in the complaint and for emphasis, Shri Krishnamurthi read out para 5 of the complaint during his pleadings.

As far as Bank is concerned there is no case of dismissal hence no question of any express permission of the authority in writing. It was not at all necessitated. In any case, the management felt that the matter in quesion not being "connected with the dispute", all far fetched arguments of the complainants' spokesman in their behalf are of no avail and Section 33(1) (a) or (b) is absolutely irrelevant and cannot be invoked. That being the case, complaint u|s 33-A can not lie and the Arbitrator will have no jurisdiction. The decision relied upon by Shri Krishnamurthi is the one reported in 1970 II LLJ 413 Supreme Court. Indian Oxygen Limited vs. Udaynath Singh and others.

7.3 Thereafter Shri Krishnamurthi proceeded further and examined the ambit of sub-section (2) of Section 33 of the Act and X-rayed the pleadings of the spokesman of the complainants who had taken support of this sub-section to built up complainant's case. The relevant ingredients of sub-section he explained being :—

(i) An Industrial Dispute within the meaning of Section 2(k) is pending;
(ii) An employer wishes to alter conditions of services applicable to a workman during the pendency of such proceedings;

(iii) The alteration in service conditions is in accordance with the certified standing orders applicable to the workman or if there is no Certified Standing Orders then the proposed action is in accordance with the contract of service whether express or implied between the workman and the employer;

(iv) The workman is concerned in the dispute;

(v) The alteration in service condition is with regard to a matter which is 'not' connected with the dispute;

(vi) If above conditions are satisfied, then the employer may alter conditions of service.

The reason for asking the sub staff members not to report for duty emanated from the fact that the sub staff in question refused to comply with their part of the contract of employment of presenting themselves for duty properly attired. Terms relating to quantum and colour of Uniforms as provided for in the conciliation settlement dated 6-4-1990 had been complied with by the Bank in the year 1992 also. The term 2(b) of the said settlement gives liberty to the Bank to decide the pattern of the Uniform. They had given to sub staff full sleeve shirts with 'U' cut. Once uniform is given, the sub-staff is duty bound to wear the uniform in the manner expected or prescribed. Referring to para 13.16 of the DESAI Award (1962), he said practice of banks relating to the supply of uniforms not being common, the said award had while giving general directions fixed the number of sets to be supplied. The type of uniform and quality of material was left to the Banks to decide. There is nothing else on this aspect in any settlement|Award. Hence the Grindlays Bank had been enterig into settlemets as on 6th January, 1984 and last settlement on 6-4-1990 and parties had agreed to leave pattern of uniform to be decided by the Bank. The very word 'Uniform' denotes uniform practice|'being uniform'|'sameness'| 'consistency': When for 1992 'U' cut full sleeve shirts were given to the sub-staff, most of them started wearing in properly by tucking it in the pant. When it was noticed that some sub-staff did not do so, they were given directions verbally and in writing how to wear it Banks orders in this regard were most reasonable, not violative of any Law, orders were not injurious to any defaulting workman.

7.4 Attacking the complainants spokesman's arguments about effecting change in usage without giving notice u|s 9-A, Mr. Krishnamurthi relying upon the decision in C. I. Kannan V The ESIC 1968 Lab.

I.C. 945 said, the Bank has every right to issue directions/orders on how properly to wtar the uniforms to the sub-staff. If for 30 years no such orders were given, does not mean that these cannot be given in 1992. If such 'rules' are introduced for the first time, Section 9-A does not become applicable. He maintained there was no change in service conditions and their orders regarding method of wearing 'U' cut shirts were most befitting and reasonable. New work methods can always be introduced by any employer to add to efficiency, within the framework of Law.

7.5 Every employee has right to come to work place for doing work and carrying out orders and not for wandering or squatting. Witness on behalf of complainants had deposed that it is a part of contract to wear uniform. Direction to wear uniform properly were not followed hence contract was not fulfilled no work was done by complainants. So where is the scope for making a grouse if no paments are made, observed Shri Krishnamurthi. Hence item 1 of Fourth Schedule is also not at all attracted. Thus, no change/no adverse change at all in any of the conditions of service has been brought about by the Bank. So complainants pleadings on violation of Section 33(2) (a) also have no strength. So, the learned Shri Krishnamurthi while concluding pleaded that when there is no contravention of either Section 33(1) or Section 33(2) the complaint u/s 33-A has no merit and is not maintainable at all.

FINDING

8. The Section 33-A provides an efficacious remedy to an aggrieved workman who has been prejudicially affected by the employer's contravention of the provisions of Section 33 of the Act. It is necessary to examine first the provisions of Sections 33-A and 33 and then to find out whether there is any infringement of Section 33 and whether the complaint is maintainable. Section 33-A confers distinct benefits on the workmen an gives some additional jurisdiction and power to the authorities under the Industrial Disputes Act, 1947 to decide the complaint 'as if it were a dispute referred to or pending before it' and to submit its award to the appropriate Government and provides that the provisions of the Act shall apply to the Award. Hence if a complaint u/s 33-A is made, the authority is to adiudicate upon the complaint. The workman does not have to wait for a reference of an industrial dispute but can himself prefer his complaint which is to be treated as a dispute under Section 10 and it is the duty of the Court/Tribunal/Arbitrator to examine the merits of the case.

8.1 To attract Section 33-A, contravention of Section 33 must be proved. Let us now turn to Section 33. This section enumerates the circumstances under which the alteration of conditions of service the discharge or dismissal by way or punishment, during the pendency of proceedings before the conciliation officer, board, arbitrator, Labour Court, tribunal or national tribunal can be undertaken by the employer. The object of the Section is to afford protection to the workmen against victmisation and to bring the proceedings to a peaceful conclusion. The Section has been divided into five sub-section. Sub-sections (3) and (4) deal with cases of protected workmen. Subsection (5) provides for the time limit for disposal of the application made under the provisions of the section. We may leave aside these sub-sections (3), (4) and (5) as we are not concerned with any of these in the complaint u/s 33-A which is the subject matter of the case in hand. We are hence concerned here with only two sub-sections viz. (1) and (2). Each of these sub-sections is in two parts and gives two distinct aspects of the matter. The first part relates to alterations and changes in service conditions and the other with regard to punishmeat by dismissal or otherwise of the workmen. We are not concerned in this case with any question of punishment and therefore, the only provisions which have to be seen are provisions contained in Clause (a) of Sub-Section (1) and (2).

8.2 The first sub-section viz. Section 33(1) (a) prohibits any action by an employer in respect of alteration of conditions of service connected with the dispute. Any alteration of conditions of service, can be effected only after the prior permission of the authorities before whom the dispute is pending, has been taken.

The second sub-section viz. Section 33(2) (a) enables an employer to alter the conditions of service of any workman not connected with the dispute, but concerned in such dispute in accordance with the standing orders, applicable to the workmen concerned in such dispute or in accordance with the terms of contract whether express or implied. This can be done by seeking only an approval for the action taken by the employer.

Thus, while sub-section (1) of Section 33 speaks of matters connected with the dispute, sub-section (2) speaks of matters not connected with the dispute. Between them, therefore, the two clauses and two subsections exhaust all those matters which are related to service conditions and alteration or change is prohibited during the pendency of an Industrial Dispute ; if the matter is connected with the dispute without the express permission in writing and if the matter is not connected with the dispute, only in accordance with the standing orders applicable or the contract of service as the case may be.

8.3 So it is obvious that to attract Section 33-A, contravention of Section 33 must be proved. In the complaint dated 12th August, 1992, the complainants have not specifically mentioned whether they alleged violation of sub-section (1)(a) or sub-section (2)(a) of Section 33 but in the pleadings, their authorised spokesman Mr. P. N. Subramanyam argued to prove violation of both the sub-section. Hence I will examine the position keeping in view both the subsections.

8.4 In the present case, the main industrial dispute which is pending before this Arbitrator relates to :—

(i) Upward revision of pension and on allied matters, and

(ii) enhancing the quantum of canteen subsidy.

The complainants allegations made in the complaint are :—

(i) prevention of 43 workmen from marking attendance on varying dates between 31-7-1992 and 6-8-1992 ;

(ii) not allotting any work ; and

(iii) notifying in writing that wages will not be paid to them.

There has to be some point of connection between the main dispute pending in Arbitration and acts in respect of which the complaint is made U|S. 33-A. It is obvious that the aforesaid allegation contained in the complaint have no connection or relevance either with pension dispute or with the dispute on canteen subsidy. I agree with long arguments of the learned Mr. Subramanyan for the complainants that they are concerned in the dispute but there is absolutely no logic in saying that, the alterations alleged are in regard to "any matter CONNECTED WITH THE DISPUTE". About an attempt to dub the employers action of refusal to give work as amounting to 'illegal dismissal' hence attracting Section 33(1)(b), it need no examination by me as the complainants have not taken any such stand in the complaints and moreover in pleading it was expressed that the concerned workmen could not tag in direct line hence they have taken a general line (para 6.2 above refers). In any case, it is apparent that there is no violation of Section 33(1)(a). Therefore, only applicable portion of Section 33 could be clause (a) of Subsection (2). In other words, it is only the service conditions applicable to the workmen were sought to be changed during the pendency of the proceedings, then only if the matter was not connected with the dispute as in the present case, the employer had to proceed either in accordance with the provisions of the Standing Orders or in accordance with the contract between the parties. Let us hence examine the position whether the allegations of the complainants, violate Section 33(2)(a).

8.5 It would be worthwhile to detail here the genesis of the case which led to action of the employer Bank and reaction of some of the workmen leading to the instant complaint.

As section 33(2) uses the terms it 'such standing orders' and "terms of the contract" is is appropriate to see what these terms mean in relation to the Banking industry.

On 5-1-1952 the Central Government in the Ministry of Labour constituted an Industrial Tribunal with Shri S. P. Sastry as its Chairman for adjudication of industrial disputes concerning Banking companies. One of the terms included in the schedule was Staading Orders regulating the conditions of service of staff. The Award given on 5-3-1953 was released for publication in the Gazette of India on 26-3-1953. This award of the All-India Industrial Tribunal (Bank Disputes), Bombay was popularly known as SASTRY Award. The Tribunal had dealt with a large group of subjects under separate issues that could appropriately come under 'Standing Orders'. Para 561 of the Award is very material hence reproduced below :—

"561 The directions given by us in various matters that fall under 'Standing Orders' taking the term in its wider significance should be understood as being subject to the provision of any Law for the time being in force. Thus the provisions of Section 33 of the I.D. Act, 1947 will apply if there be an I.D. and the dispute is referred to conciliation or to a tribunal for adjudication".

Later by a notification dated 21-3-1960 the Central Government constituted a National Indstrial Tribunal of adjudicate industrial dispute over 22 issues. Shri Justice K. T. Desai, judge was appointed as its Presiding Officer. This Award was given on 7-6-1962 and released for publication on 13-6-1962. The para 13.16 of the Desai Award contains directions on the Uniform|liveries. Besides directing the supply of atleast two sets of cotton Uniforms it only gave certain general directions in connection with the supply of Uniforms to the members of the subordinate staff. It left to the banks to decide about the type of Uniforms and the quality of the material to be used in connection therewith.

Besides these two major Awards, there have been long term Bi-partite settlements commencing from 1st Bi-partite settlements dated 19-10-1966 applicable to Banking companies. The Industrial Banks have in between been entering into Bi-partite or Tripartite settlements with their Unions|Associations|Federations to improve certain service conditions of their workmen (Award Staff). These agreements between the parties are the contracts.

8.6 The ANZ Grindlays Bank plc entered into one such settlement on 6-4-1990 with its Federation and Association before Conciliation Officer|Deputy Chief Labour Commissioner (C), New Delhi. With effect from the year, 1990 it was agreed that permanent full time members of the subordinate staff as well as permanent part-time workmen in the subordinate cadre working for not less than 6 hours per week shall be supplied with 3 full sleeved terry-cotton shirts and 2 terry-cotton trousers every year. Term No. 2 of the said settlement gives liberty to the Bank to utilise the Bank's colours while stiching the uniforms and to decide the pattern of the uniform.

8.7 As per the employers obligations under the settlement, it gave for the year 1990, 1991 and 1992 3 full sleeved terry-cotton shirts besides the two terry-cotton trousers. The pattern provided by the Bank for the year 1992 has been 'U' cut shirts. Having provided the uniform, the employees were expected to wear the uniform in the desired or prescribed manner by the Bank's management. Most of the subordinate staff did tuck in the shirts rightly inside the trousers. Some subordinate staff did not comply with the directions of the bank in this regard. Bank felt that leaving the terry-cotton shirts outside the Pant did not conform to the usual norms of decency. Those defaulting employees insisted for written instructions. These were also given. Despite this, some sub-staff continued to defy the written instructions. Even after sounding when they persisted, the Bank did not permit such employees to record their attendance and commence work on the days they refused to comply the requirements. The documents filed on behalf of

the complainants on 15-9-1992 and marked W1 to W4 agreed to be taken as evidence common to all 43 complainants, clearly bring out the above position.

8.8 The complainants have called these actions of the employer as malafide, vexatious and illegal. While saying so complainants have mentioned in para 6 of the complaint that they had not tucked into the pant the Bush Shirts. It is really strange that the complainants have used the words Bush Shirts, thrice in lines 3, 7 and 9 of para 6 of the complaint to give an impression as if they were provided for and directed to tuck in the bush shirts and not the full sleeved terry-cotton shirts with 'U' cut. This distortion of facts is clearly an attempt to misrepresent facts.

8.9 In pleadings on behalf of the complainants much has been said about changing the conditions of service relating to items 8 and 1 of the FOURTH Schedule of the Industrial Disputes Act, 1947 without giving any notice U|S. 9-A of the said Act. The management on the other hand, resisted the claim of the workmen. Item 8 of the said schedule is 'withdrawal of any customary concession or privilege or change in usage. Let us see whether there is any change in usage. An employee has right to wear what he chooses, to act as he chooses. But a Uniform provided for by the employer has to be worn as one is expected or directed. He should ensure that he does not offend against decency. It is a common knowledge that certain pattern of certain attire has to be worn only in a certain way. Earlier shirts provided by the Bank did not have a 'U' cut, these could be worn inside or outside. Shirts provided in 1992 according to the memorandum of settlement contain the pattern chosen by the employer-Bank which require tucking it in. The insistence of some of the sub-staff to wear the uniform not in compliance with the normal norm and given instruction is nothing but defiance and stubborn refusal to carry out even written instructions. The DESAI Award prescribed quantum only and, nothing about type of patterns which was left to the discretion of the Banks. The Bank drew authority for it from 6-4-1990 conciliation settlement. The very word Uniform means uniform|identical practice. If the Bank gave the uniform it has right to instruct how to wear it, according to normal accepted standard. For pattern the management has right drawn from Conciliation Settlement i.e. express contract and manner of wearing is implied. I find their stand is reasonable and not illegal. Their action is not violative of any Law. The complainants have not proved how the Bank has committed any alteration in the conditions of service which is very basis for a complaint under Section 33-A. Section 9-A of the Act does not apply as wrongly assumed by the complainant's spokesman because there is no alteration of a condition of service. The complainants are not affected at all prejudicially.

8.10 Item 1 of the FOURTH Schedule is about "wages, including the period and mode of payment". The term WAGES has been defined in Section 2(rr) of the Industrial Disputes Act, 1947. Its important ingredients are :

(1) remuneration payable if the terms of employment whether express or implied are fulfilled ;

OR

(2) work done in employment.

The contract is to wear Uniform, if it is not worn as expected|directed, the contract-express and implied as well in the instant case, can not be said to be fulfilled. The natural fall out is non-entitlement for wages. During the days when directions of properly wearing uniform not obeyed, they were not allowed to marking the attendance register and thus were not allotted works and when no work done how can the claim for wages lie. Thus, there is no change in quantum of wages, the period and mode of payment hence item 1 of the FOURTH Schedule is not attracted.

8.11 Hence, there is no change in the 'Service Conditions applicable' to the complaining workmen. All the pleadings in regard to FOURTH Schedule| Section 9-A|Section 33(2)(a) could not substantiate the complainants stand.

9. Lastly, let me touch upon the allegation of VICTIMISATION made against the employer-Bank on behalf of the complainants. Ordinarily a person is victimised if he is made a victim or a scapegoat and is subjected to prosecution, prosecution or punishment for no real fault or guilt of his own. If actual fault is established, such action will be rid of the taint of victimisation. Victimisation is a serious charge by an employee against an employer and therefore, it must be properly and adequately pleaded. The charge must not be vague or indefinite. The onus of establishing a plea of victimisation has to be upon the person pleading it. In the instant case I find that it has been a mere allegation, vague suggestion and no victimisation by the employer has been proved.

10. In the light of the above detailed analysis, the complaint therefore, must fail and is rejected. I award accordingly.

NAGPUR.

22nd OCTOBER, 1992

H. G. BHAVE, Arbitrator.

नई दिल्ली, 30 अक्तूबर, 1992

का.आ. 2918.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मोसाबानी ग्रुप ऑफ माइनज इ.सी.एल/एच सी एल, घटसिला (सिंहभूम) के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2 धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-10-92 को प्राप्त हुआ था।

[संख्या एल-43012/7/89-आई.आर. (बी)]

बी. एम. डेविड, डैस्क अधिकारी

New Delhi, the 30th October, 1992

S.O. 2918.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2 Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Mosaboni Group of Mines of ECL/HCL, Ghatsila (Singhbhum) and their workmen, which was received by the Central Government on the 28-10-1992.

[No. L-43012/7/89-IR(Misc)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947.

Reference No. 21 of 1989

PARTIES :

Employers in relation to the management of Mosaboni Group of Mines of HCL/ICC, Ghatsila, Distt. Singhbhum and their workmen.

APPEARANCES :

On behalf of the workman : Shri B. Joshi, Advocate.

On behalf of the employers : Shri J. P. Singh, Advocate.

STATE : Bihar. INDUSTRY : Copper.

Dated, Dhanbad, the October, 1992

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-43012/7/89-I.R. (Misc), dated, the 9th September, 1989.

SCHEDULE

"Whether the action of the management of Mosaboni Group of Mines of HCL/ICC, Ghatsila, Distt. Singhbhum in dismissing the services of Sri Ram Chandra Hembram, Sipoy, Badge No. 2171 w.e.f. 16-4-87 is justified: If not, what relief is the said workman entitled to-"

2. Shri Ram Chandra Hembram, the Siphoy of the management of Mosaboni Group of Mines, Ghatsila Mine of H. C. Ltd., Dist. Singhbhum was dismissed from the services on account of misconduct committed by him under clause 9. (v), 9(x) and 9(e) of the Certified Standing Orders. It was stated that while he was on duty on Surda Mine gauge road area on petrolling duty in the night of 17-12-86 in 'C' shift duty a theft was committed by breaking open the lock of Surda Surface store and T.C. rods numbering 39 were stolen away by some unknown miscreants. The charge further stated that the above incident of theft would not have occurred had he been alert and vigilant on duty.

3. The concerned workman through his W.S. submitted that the action of the management in dismissing him from 16-4-87 was illegal and unjustified. Firstly it was contended that he was issued chargesheet on 18-12-86 by an officer without any authority and he was suspended for the period from 18-12-86 till his dismissal, but without any payment of suspension allowance which was in contravention of Section 10A of the I.E. (SO) Act, 1946. It was submitted that non-payment of subsistence allowance during the period of suspension pending enquiry makes the entire disciplinary action illegal and void. It was further stated that an FIR was lodged with the police about the theft of T.C. rod by Shri M. Kundu Sr. Mining Engineer but after full dress trial the learned judicial Magistrate discharged by his order dt. 28-2-87. It was also alleged that the domestic enquiry was not conducted in fair and proper manner but prior to hearing the matter on merit the learned counsel for the workmen conceded about the fairness and propriety of the domestic enquiry and hence the parties have been directed to submit their point on the basis of evidence available with the enquiry proceeding.

4. Lastly it was contended that the concerned workman had to give round of several places during his shift and was not posted exclusively at the store just like the security guard. However, there was no evidence that the rods actually stolen away were brought to the store and in this way he has been falsely implicated in this case. In the circumstances it was prayed that he be reinstated with full back wages.

5. The management submitted separate W.S. stating that the concerned workman was appointed by the management as Sepoy with effect from 17-2-1984 and on the alleged day of occurance he was posted for duty at Surda Mines. In the same night at about 3.10 A.M. during his duty hours a theft took place by breaking open the lock of Surda Surface Stores. The concerned workman firstly did not submit any explanation and therefore a departmental enquiry was conducted. In the departmental enquiry he was found guilty of the charges and ultimately he was dismissed. In this way it was prayed that there was no merit in the reference and no relief should be granted to the concerned workman.

6. The main point for consideration would be as to whether the concerned workman was negligent in his duty and whether the incident of theft could have been averted had he been alert and vigilant on duty. If it was so whether the punishment of dismissal inflicted upon the concerned workman was just and proper.

7. Admittedly Shri Ram Chandra Hembram was in 'C' shift duty posted for duty at Surda Mines Gange area. On that very fateful night at about 3.30 A.M. a theft was alleged to have been committed and T.C. rods numbering about 39 were stolen away by breaking open the lock of Surda purface store. The learned counsel for the workmen submitted that the charge of negligence will come into play only when the theft of T.C. rods is actually proved. It was for the management and the management alone to prove this fact. It was pointed out that no stock register nor any other paper was filed to show the actual stock position of the T.C. rod immediately prior to the alleged occurance. It was further submitted that the said T.C. rods even it was in the store might have been disposed of otherwise or the same might not have been stored at the surface stores. The learned counsel also suspected that the same might have been misappropriated by the officials and just to have their neck they made the concerned workman scapegoat. I would have been certainly appreciated this learned argument had the concerned workman in his reply to the chargesheet raised any doubt about the story of theft. On this point he did not whisper even a word in his reply to the chargesheet. From the enquiry proceedng it will appear that at the very start of the enquiry the concerned workman was asked to submit his written reply to the chargesheet but he replied that he had received chargesheet but since it was lost he could not reply. He was supplied with the copy of the chargesheet and then the concerned workman relied that on the alleged day of occurance he had been moving around and checking several offices. In that way he reached Manager's office when he hear sound "Chor, Chor". He further stated that he reached there a bit late and found the lock broken.

8. The statement of the concerned workman was recorded by the E.O. on 30-3-1987 as DW-1. He admitted that on the alleged night of occurance he was in 'C' shift duty at Gauge road area at Surda Mine. In the very opening line of cross-examination he stated that he knew that drilling rods were stolen away from the store of Surda Mie in the night of 17/18-12-1986. His statement will further disclose that the police had reached the place of occurance and investigated into the matter. In his way he admitted the story of theft. It is the established principle of law that the things admitted ned be proved. In that view of the matter it was not obligatory on the part of the management to prove the theft. Thus we will have to move in the matter assuming that theft of 39 T.C. rods were committed by breaking open the locks.

9. Now in the context of the above situation let us examine as to how far the concerned workman was negligent and whether the theft could have been prevented had be been present at the store, or he otherwise vigilant in the night. It is very difficult to say that the theft could have been prevented by mere presence of the concerned workman at the store. Admittedly of armed Sentry were also on the duty. They as per evidence had seen the thieves running away with the drilling rods and they also stated to have opened fire but neither the thieves could be arrested nor the stolen rods articles could be recovered. It was rightly canvassed when the gunmen could not prevent the theft how it was possible that the same could have been prevented by the concerned workman who had no arm.

10. Admittedly, the concerned workman was not on the spot at the time of actual occurance. He admitted that he was at Manager's office when he heard hulla of "Chor, Chor". The question is whether the duty hour of the concerned workman was solely confined to the store or he was to move at other places also as stated by him in his reply to the chargesheet. Again the question comes up for consideration that all those places named by the concerned workman were within the area of 100 Sq. yard and he had been present at any of the places, he would have rushed to the place of occurance in no time and helped the armed man in chasing the culprits or would have provided assistance to them in preventing the incident of theft. We cannot ignore this aspect of the submission made by the learned counsel for the management. The concerned workman has stated that the distance between the gauge road and the Manager's office is about 50-60 yards. I do not think that this distance was long enough to take much time in reaching the place of occurance. Naturally on hearing hulla of "Chor, Chor" one is expected to reach soon or go running.

11. Shri Martin Tete a sepoy (M-5) has unnecessarily tried to fix up the entire responsibility over the head of the concerned workman when he stated that he and Lal Bahadur Thapa another Sepoy saw the culprit taking away drilling rod. As they wanted more assistance they blew whistle but there was no respone The evidence has come that number of miscreants were about 5 or 6. We can just imagine that those five thieves had taken away 39 Nos. of drilling rod on their shoulders. Normally they were not expected to have been running away with the rods on their heads. I would like to impress upon that these two sepoys armed with gun were in more confortable position to prevent the theft. It will be most surprising to note that Shri Shekhar a Tea boy had seen the Sepoys firing in the air. The question is when they were taking away stolen articles the firing should have been effective.

12. No duty chart has been proved to show the area of the duty of the concerned workman and so we are not sure whether the duty of the concerned workman was solely confined to Surda Mines store. In absence of these things we will move assuming that his area of the duty was beyond the mine store as stated by the concerned workman. In other words his duty was spread over in the entire gauge area. Shri Rameshwar Singh is over all charge of watch and ward department of Mosaboni Group of Mine. He has been examined as MW-3. Admittedly, he was not on duty on the night of occurance but he stated that the area duy of the concerned workman was about 100 Square yards. Shri Kundh MW-1 also stated that the entire gauge road area is within the radius of 15 to 20 metres. According to this witness also the distance was not far away. Naturally in the circumstances the concerned workman was expected to reach the sore soon after hulla of "Chor, Chor". According to Shri Tete he reached there about an hour. Shri

Khund also stated that the concerned workman reached after about 45 minutes after his arrival. All these things simply prove that Shri Ram Chandra Hembram was not very careful and vigilant in his duty. The concerned workman has proved the certified copy of the bail order Ext. W-1 showing that a criminal case of the said occurance was lodged by the management in which he was admittedly to bail. I think the bail order of the judgement of acquittal by the Criminal Court will be of no value to the concerned workman for the management alleged that the concerned workman was one of the culprits or he had anyway connived with criminals.

13. Raising legal objection it was contended by the learned counsel for the workmen that chargeshet was not issued by the competent authority. I think this can be only an irregularity and the case should not be allowed to fail on such technical ground. It was stated that during the suspension period the concerned workman was not paid any subsistence allowance. But while giving parawise reply to the W. S. of the workmen the management contended that the concerned workman did not sign suspension register and he did not make any demand for the same.

14. I have considered all these aspect of the matter and on the basis of evidence available during the course of enquiry I am to hold that the concerned workman was a bit negligent in his duty which he was inflicted the most severest punishment of dimisssal by the management. I think this sort of punishment for a minor type of negligence was shockingly disproportionate to the misconduct proved. Therefore, I would set aside the order of dismissal and order for reinstatement of the concerned workman without any back wages. I think this will meet the ends of justice. However, the concerned workman will get the continuity of service. The management is thus directed to reinstate the concerned workman to his original job within one month from the date of publication of the Award without any back wages.

B. RAM, Presiding Officer

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